

FILED

JUN 9 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

530
new

1 LeAndre Johnson D-88755
2 P.O. Box 4000 (13R1UP)
3 Vacaville, CA 95696-4000

4
5
6 In Pro Per

7 IN THE UNITED STATES DISTRICT COURT
8
9 NORTHERN DISTRICT OF CALIFORNIA

MMC
(PR)

E-filing

11 In re }
12 LeAndre Johnson, }
13 Petitioner, }
14 v. }
15 Tom Carey, et. al., }
16 Respondents, }
17 On Habeas Corpus. }

CV Case No. 08

2883

PETITION FOR WRIT OF HABEAS CORPUS
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

608-2883 mmc

19 INTRODUCTION

20 Petitioner is alleging that his constitutional right to due
21 process was violated when the respondents failed to fulfill all of
22 the terms of the contract in which they agreed to during the plea
23 canvassing. In fact, petitioner's sentence has even been increased
24 beyond that agreed to by all the parties named herein.

25 Therefore, petitioner's plea was not knowingly, intelligently,
26 and voluntarily made and is void under the Fifth and Fourteenth
27 Amendments of the United States Constitution.

28

PARTIES

2 Petitioner, LeAndre Johnson, CDCR# D-88755, is a state prisoner
3 within the California Department of Corrections and Rehabilitation,
4 at all times herein housed at Solano State Prison, in Vacaville,
5 California.

6 Respondent, Tom Carey, is the Warden of Solano State Prison and
7 has direct custody of the petitioner. Included in his duties is that
8 of complying with all the laws of the State of California. Including,
9 the State and Federal Constitutions.

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STATEMENT OF FACTS

1. Petitioner was repeatedly informed that if he were to plead guilty that once he reached his initial parole hearing he would have a release date set, but he has not received one yet, even after attending his first parole hearing. See exhibit "A".

2. Petitioner was promised and informed during the court's plea canvassing that his parole period would be set at five years, but the petitioner has recently discovered that his parole period has been set at life. Had the petitioner known his parole period would be set at life he would never accepted the plea agreement. See exhibit "A", "B", and "C".

3. That had the petitioner known he would not have a release date set or that his sentence would be increased beyond that bargained for, he would have never plead guilty. See exhibit "C".

STATEMENT OF CASE

3 On April 4th, 1988 before the Honorable Courtland D. Arne, Judge
4 of the Superior Court of the State of California, in and for the
5 County of Alameda, petitioner entered into a plea agreement by and
6 through the Alameda County District Attorney's Office, case no.
7 91813A. See exhibit "A".

8 After appearing before the Parole Board for the first time and
9 not receiving the benefits as promised in exchange for his guilty
10 plea, the petitioner filed a Habeas Corpus in the Superior Court
11 seeking relief. However, on May 3, 2006 the Superior Court denied
12 his petition. See exhibit "D".

13 The petitioner filed in the appellate court, but that petition
14 was denied as well. See exhibit "E".

15 Finally, petitioner then received a denial from the California
16 Supreme Court on June 20, 2007. See exhibit "F".

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1 2005 Hearing Transcripts (Ex " ")

CONTENTIONS

I

PETITIONER HAS A CONSTITUTIONAL RIGHT TO HAVE THE STATE
COMPLY WITH THEIR PART OF THE PLEA AGREEMENT

II.

PETITIONER MUST BE PERMITTED TO WITHDRAW HIS PLEA

III.

PLEA AGREEMENTS ARE CONTRACTS REQUIRING THE STATE TO LIVE
UP TO THEIR PART OF THE CONTRACT

PRAYER FOR RELIEF

Petitioner is without remedy save for habeas corpus. Accordingly, this court should grant the following relief which is being respectfully requested;

1. Issue a writ of habeas corpus;
2. Issue an order to show cause;
3. Order an evidentiary hearing;
4. Issue it's order that respondent's actions and inactions of complying with the terms of the plea agreement is in violation petitioner's constitutional rights;
5. Issue it's order declaring that petitioner be immediately released from prison;
6. Issue it's order that the petitioner be permitted to withdraw his plea;
7. Appoint counsel or award reasonable attorney fees;
8. Grant any and all relief this court deems appropriate.

Dated this day of , 2008.

Respectfully submitted,

LeAndre Johnson
In Pro Per

VERIFICATION

I, LeAndre Johnson, CDCR# D-88755, hereby declare that:

I am the petitioner in this action and have read the foregoing petition for writ of habeas corpus. The facts stated therein are true and factual of my own knowledge, except as to those matters that are based on information and beliefs, and as to those matters I believe them to be true and correct copies of the original(s). I do declare the foregoing under the penalty of perjury and in accordance with the laws of the State of California.

LeAndre Johnson
In Pro Per

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITIONER'S CONTENTIONS

A. STANDARD OF REVIEW

Under Santobello v. New York, 404 U.S. 257, 261-62 (1971), a criminal defendant has a due process right to enforce the term of his plea agreement. See also Brown v. Poole, 337 F.3d 1155, 1159 (9th Cir. 2003); Buckley v. Terhune, (2006) DJDAR 3225. ("The defendant's due process rights conferred by the federal constitution allows him to enforce the terms of the plea agreement").

However important plea bargaining maybe in the administration of the criminal justice, United States Supreme Court opinions have established that a guilty plea is a serious and sobering occasion inasmuch as it constitutes a waiver of fundamental rights to a jury trial, Duncan v. Lousianna, 391 U.S. 145, 20 L. Ed. 2d 491, 88 S. Ct. 1444. These State and Federal rights may be waived through a guilty plea, but such waivers are not lightly presumed, and in fact, are viewed with the "utmost solicitude". Boikins v. Alabama, 395 U.S. 238, 243, 23 L. Ed 2d 274, 279, 89 S. Ct. 1709 (1969).

There is no need to belabor the fact that the Constitution guarantees to all criminal defendants the right to a trial by judge or jury, or, put another way, the "right to plead not guilty".

United States v. Jackson, 390 U.S. 570, 581, 20 L. Ed. 2d 138, 146, 88 S. Ct. 1209 (1968). State convictions founded upon coerced or unfairly induced guilty pleas have also received increased scrutiny as more fundamental rights have been applied to the states,

1 Santobello v. New York, 404 U.S. 257, 262, 92 S. Ct. 495, 498, 30
 2 L. Ed. 2d 427 (1971).

3 In United States v. Anderson, 970 F. 2d 602 (9th Cir. 1992) the
 4 Ninth Circuit Court stated that under Santobello, the general rule
 5 governing the enforcement of plea agreements is as follows:

6
 7 "When a plea rest in any significant degree on a
 8 promise or agreement of the prosecutor, so that
 9 it can be said to be part of the inducement or
 10 consideration, such promised must be fulfilled.
 11 Santobello v. New York, 404 U.S. 257, 262, 92

12 S. Ct. 495, 498, 30 L. Ed. 2d 427. In determin-
 13 ing whether a plea agreement has been broken,
 14 courts look to what was reasonably understood by
 15 the defendant when he entered his guilty plea.

16 United States v. Arnett, 628 F. 2d 1162, 1164
 17 (9th Cir. 1976)). If disputed, be determined by
 18 objective standards. Arnett, supra, at 1164. The
 19 government will be held to the "literal terms"
 20 of the agreement. United States v. Garcia, 519
 21 F. 2d 1343, 1344-45 (9th Cir. 1975). (Emphasis
 22 added).

23
 16 United States v. Travis, 735 F. 2d 1129, 1132 (9th Cir. 1984);

24
 17 McKenzie v. Risley, 801 F. 2d 1519, 1527 (9th Cir. 1986). When the
 18 state (respondents) breaks the bargain, they undercut the basis for
 19 the waiver of constitutional rights implicit the plea. Santobello,
 20 supra, 404 U.S. at 268, 92 S. Ct. at 502; Pedro v. United States,
 21 79 F. 3d 1065 (11th Cir. 1996).

22
 23 To determine whether a plea agreement has been breached, a
 24 court must look to what the party reasonably understood to be the
 25 terms of the agreement, when he plead guilty. See United States v.
 26 Anderson, 970 F. 2d 602, 607 (9th Cir. 1992), amended, 990 F. 2d
 27 1163 (1993); United States v. Packwood, 848 F. 2d 1009, 1011 (9th
 28 Cir. 1988) and any ambiguity should be resolved against the state.
Sutton, supra, at 1423; Arnett, supra, at 1164; United States v. Read,

1 778 F. 2d 1437, 1441 (9th Cir. 1985), cert. denied, 479 U.S. 835,
2 107 S. Ct. 131, 93 L. Ed. 2d 75 (1986); United States v. Velez
3 Carrero, 77 F. 3d 11 (1st Cir.). Construing ambiguities in favor of
4 the petitioner makes sense in light of the parties respective bar-
5 gaining power and expertise. United States v. Fuente, 8 F. 3d 1333
6 (9th Cir. 1993); United States v. Ingram, 979 F. 2d 1179, 1189
7 (7th Cir. 1992).

8 In California, "a negotiated plea agreement is a form of con-
9 tract, and it is interpreted according to general contract princi-
10 ples," People v. Shelton, 37 Cal. 4th 759, 767 (2006), according to
11 the same rules as other contracts," People v. Toscano, 124 Cal. App.
12 4th 340, 344 (2004) cited with approval in Shelton along with other
13 California cases to same effect dating back to 1982. Thus, under
14 Ricketts v. Adamson, 483 U.S. 1, 6 n.3 (1987), California Courts are
15 required to construe and interpret plea agreements in accordance
16 with state contract law.

17 Plea agreements are "unique contracts" and the ordinary con-
18 tract principles are supplemented with a concern that the bargaining
19 process not violate petitioner's right to fundamental fairness under
20 the due process clause. United States v. Rourke, 74 F. 3d 802, 805
21 (cert. denied, 517 U.S. 1215, 116 S. Ct. 1840, 134 L. Ed.
22 2d 942 (1996)). The state must fulfill any promise that it expressly
23 or implies in exchange for petitioner's guilty plea. United States
24 v. Ingram, 979 F. 2d 1179, 1184 (7th Cir. 1992) cert. denied, 507
25 U.S. 887, 113 S. Ct. 1616, 123 L. Ed. 2d 176 (1993) citing Santobello

26 And in this case, petitioner reasonably relied on the under-
27 standing and belief, and was promised that if he were to waive his
28 rights and plead guilty he would receive the benefits cited below,

1 but he has not. Therefore, because of this, these, unkept promise(s)
2 and the serious constitutional question whether petitioner's plea
3 was voluntarily and knowingly made, Santobello; Brady v. United
4 States, 397 U.S. 742, 755, 25 L. Ed. 2d 747, 90 S. Ct. 1463, he is
5 entitled to relief in this court.

6
7 I.
8

9 PETITIONER HAS A CONSTITUTIONAL RIGHT TO HAVE
10 THE STATE COMPLY WITH THEIR PART OF THE PLEA AGREEMENT

11 A. PETITIONER WAS PROMISED A RELEASE DATE WOULD BE SET.

12
13 The United States Supreme Court has established standards for
14 negotiated pleas in Boikin v. Alabama, (1969) 365 U.S. 238, 89 S.
15 Ct. 1709, 23 L. Ed. 274. In Boikin, the court held that a guilty
16 plea would not be accepted unless there was affirmative evidence
17 that the plea was not only voluntary, but further concluded that the
18 trial court must use the "utmost solicitude.... in canvassing the
19 the matter with the accused to make sure that he has a full under-
20 standing of what the plea connotes and it's consequences." Boikin v.
21 Alabama, supra, 395 U.S. at 243-244, and 1712, 23 Ed. 2d at 280. and
22 in this particular case the court failed to follow this and other
23 established standards.

24 During the plea canvassing the following dialogue transpired
25 in which the petitioner was promised that he would have a release
26 date set by the Department of Corrections, but as of today's date
27 he has failed to receive one and in fact, is not entitled to one
28 under state law.

1 THE COURT: Now, when you appear in the superior court, then
2 pursuant to this agreement, the judge is going to
3 sentence you on one count to 25 years to life. Do
4 you understand that?

5
6 THE WITNESS: (Witness nods head.)

7
8 THE COURT: Do you understand that?

9
10 THE WITNESS: Yes.

11
12 THE COURT: When you are released from state prison, you will
13 be on parole. And it is at least theoretically
14 possible to be on parole for as long as five years.
15 If at anytime while on parole you violate your
16 parole, you can be returned to state prison for up
17 to one year for each separate violation. Do you
18 understand that?

19
20 THE WITNESS: Yes.

21
22 THE COURT: Has anyone made you any promises in connection with
23 your plea to these charges that have not been stated
24 here in open court and in front of me this afternoon
25 and on the record?

26
27 THE WITNESS: Certain circumstances would be dropped?

1 THE COURT: They would move the court to drop the charges.
2

3 THE WITNESS: Yeah.
4

5 THE COURT: Have any promises been made to you which I haven't
6 heard about this afternoon on the record?
7

8 THE WITNESS: No, not really. How many years of that would I do?
9

10 THE COURT: Your attorney can advise you.
11

12 MR. COLE: That essentially is up to the Department of Corrections.
13 And we discussed that currently what the rough
14 estimate is. But the court is not in charge of that.
15 so, that is something between you and the Department
16 of Corrections once you enter the system. And I
17 believe you know as much about that as anybody because
18 that is something that the court can't address because
19 it's not up to the judge. And you will be released in
20 due course of parole essentially, and that would be
21 up to the Department of Corrections. And that would
22 depend on your sentence and conduct in prison.
23

24 THE WITNESS: All right.
25

26 THE COURT: All right. Now, my question to you is: Has anyone
27 made you any promises in connection with pleading
28 guilty to these charges today that I haven't heard

1 about here in open court this afternoon on the
2 record?

3
4 THE WITNESS: That I would have a release date?

5
6 THE COURT: Well, you will indeed. That is an automatic with
7 the Department of Corrections. They will set that
8 date.

9 (CT. Pages 7-10, lines 2-4) (Exhibit "A")

10
11 During the plea canvassing conducted by the court petitioner
12 was asked "has anyone made you any promises in connection with
13 pleading guilty to these charges today that I haven't heard about
14 right here in open court this afternoon on the record ?". Petitioner
15 responded by stating "that I would have a release date?". Then the
16 court went on to state that "well, you will indeed. That is an
17 automatic with the Department of Corrections. They will set that
18 date." However, petitioner recently appeared before the Board of
19 Parole Hearings and did not have a parole date set in accordance
20 with the promise made to him, a direct violation of the terms of
21 the contract.

22 In fact, under California Penal Code section 3041 and California's
23 indeterminate sentencing laws the Board of Parole Hearings is
24 not required to ever set a release date for the petitioner. Had the
25 petitioner known that he would not be given a release date he would
26 not have ever plead guilty. Exhibit "C". Petitioner asserts that
27 he was deceived, misinformed, and promised inducements that were
28 unfulfillable.

1 Therefore, petitioner's plea is void under the Fifth and
 2 Fourteenth Amendments to the United States Constitution as a denial
 3 of due process, unless petitioner knowingly, intelligently, and
 4 voluntarily plead guilty. See Boykin v. Alabama, 395 U.S. 238, 242,
 5 89 S. Ct. 1709, 1711, 23 L. Ed. 2d 274 (1969); Brady v. United
 6 States, 397 U.S. 742, 748, 90 S. Ct. 1463, 1468-69, 25 L. Ed. 2d
 7 747 (1970). The circumstances surrounding the petitioner's plea of
 8 guilty and during the plea canvassing dispel any finding that he
 9 made an intelligent, knowing, and voluntary decision when he waived
 10 his rights in exchange for a "phantom release date" promised to him
 11 by not only the respondents, but the court itself. Exhibit "A".

12

13 B. PAROLE PERIOD NOT TO EXCEED FIVE YEARS.

14

15 Federal courts have time and again vacated or forced compliance
 16 with pleas when defendants have been able to show that they have
 17 been unfairly subjected to punishment beyond that bargained for in
 18 the plea negotiation. A plea is not voluntary and hence, a violation
 19 of due process, if induced by misrepresentations (including fulfilled
 20 or unfulfilled promises). Brady v. United States, (1970) 397 U.S.
 21 742, 755, 90 S. Ct. 1463, 1472, 25 L. Ed. 2d 747, 760.

22 In this particular instance, the petitioner was promised that
 23 if he were to plead guilty a parole period of five years would be
 24 imposed upon his release.

25 "THE COURT: When you are released from state
 26 prison, you will be on parole. And it is at
 least theoretically possible to be on parole
 for as long as five years."

27 Exhibit "A", at pg. 7, line 18-21.

28

1 However, petitioner recently discovered that his parole period has
 2 been set at life, not five years as promised. In fact, the imposition
 3 of a five year parole period is not even allowed or legal under
 4 state law.

5 (a) In the case of any inmate sentenced under
 6 section 1168 for any offense of first or second
 7 degree murder with a maximum of life imprisonment,
 shall be the remainder of the inmate's life.

8 P.C. section 3000.1.(a).

9 Therefore, petitioner now faces additional punishment and more
 10 restraint upon his liberty and / or actual incarceration that can
 11 and often does result during the period of parole and this constitutes
 12 punishment beyond the terms of the plea bargain entered into
 13 by the petitioner. It is uncontrovertable that "The conditions of
 14 parole place a number of onerous burdens on the liberty of paroled
 15 individuals", including the possibility of being returned to prison
 16 for a technical parole violation. United States ex rel. Baker v.
Finkbeiner, (1977) 551 F. 2d 180, 184; and fn.6. And had petitioner
 17 known that his parole period would be fixed at "life" he would not
 18 have ever accepted the plea offer. See exhibit "C". Thus, the
 19 petitioner is entitled to relief in this court.

21 Now there can be no question that plea agreements are interpreted
 22 according to the reasonable expectations of the parties.
United States v. Sophie, 900 F. 2d 1064, 1071 (7th Cir. 1990), cert.
denied, 498 U.S. 843, 111 S. Ct. 124, 112 L. Ed. 2d 92 (1990);
United States v. Fields, 776 F. 2d 1161 (7th Cir. 1985). It follows
 23 that when the respondents breaches the terms of the contract with
 24 respect to an executed plea agreement, petitioner plead guilty on
 25 false promise, and hence his conviction cannot stand. Santobello.

1 ,ante. Petitioner's plea agreement can truly be said to be "volun-
 2 tary" only when "the bargain represented by the plea agreement is
 3 not frustrated. United States v. Peglera, 33 F. 3d 412, 413 (4th
 4 Cir. 1994); United States v. Jureidini, 846 F. 2d 964, 965-966 (4th
 5 Cir. 1988). Because a state that lives up to its commitments is the
 6 essence of liberty under law, the harm generated by allowing the
 7 the state to forego its plea bargain obligations is one which cannot
 8 be tolerated.

9 As a general rule, fundamental fairness means that the courts
 10 will enforce promises made during the plea bargaining process that
 11 induce petitioner to waive his constitutional rights and plead
 12 guilty. Staten v. Neal, 880 F. 2d 962, 963 (7th Cir. 1989). In the
 13 present case, there is no question that an agreement was reached,
 14 nor that petitioner has fulfilled his part of the agreement by
 15 pleading guilty, so that he is entitled to an appropriate remedy if
 16 the state breached the agreement. United States v. Harvey, 791 F.
 17 2d 294, 300 (4th Cir. 1986) (citing Santobello, 404 U.S. 257)
 18 (where a defendant fulfills his promise in entering a guilty plea,
 19 the prosecution is bound to fulfill any promise made in exchange).
 20 Santobello, at 262, 92 S. Ct. at 499; United States v. Robinson,
 21 924 F. 2d 612, 613 (6th Cir. 1991).

22 The state is to be held to the literal terms of the agreement;
 23 complying with all the promises made at the time petitioner entered
 24 into a contractual agreement with the people. Read, supra at 1441,
 25 Anderson,supra at 607 and ordinarily the state must bear responsi-
 26 bility for any lack of clarity. United States v. Herrera, 928 F. 2d
 27 769, 772 (6th Cir. 1991); United States v. Giorgi, 840 F. 2d 1022,
 28 1026 (1st Cir. 1988). The vital principle is that he who by his

1 language or conduct leads another to do what he would not otherwise
 2 have done shall not subject such person to loss or injury by dis-
 3 appointing the expectation upon which he acted. Such a change of
 4 position is sternly forbidden. It involves fraud and falsehood, and
 5 the law abhors both. Wade v. Markwell & Co., 118 Cal. App. 2d 410,
 6 421; Pruitt v. Fontana, 143 Cal. App. 2d 675, 687.

7 An executed agreement is one the object or terms of which have
 8 been fully performed. Civil Code 1661; Henehan v. Hart, 127 Cal.
 9 656; Treadwell v. Nickel, 194 Cal. 243. In this case, petitioner
 10 pleading guilty to first degree murder. The Ninth Circuit has
 11 stated that it is the reasonable understanding of the parties that
 12 determines the meaning of disputed terms. See e.g. United States v.
 13 Gerace, 997 F. 2d 1293 (9th Cir. 1993); Keller, supra 902 F. 2d at
 14 1393. As a practical matter, because the Ninth Circuit employs an
 15 objective standards - it is the parties or petitioner's reasonable
 16 beliefs that control - the difference between stating that the
 17 petitioner's or the parties beliefs control is minimal. The
 18 construction the court adopts, however, incorporates the general
 19 rule that ambiguities are construed in favor of petitioner. Focus-
 20 ing on petitioner's reasonable understanding also reflects the
 21 proper constitutional focus on what induced petitioner to plead
 22 guilty. See generally, Mabry v. Johnson, 467 U.S. 504, 501-11,
 23 81 L. Ed. 2d 437, 104 S. Ct. 2543 (1984). If the petitioner was
 24 induced with the promise that he would have a parole date and that
 25 his parole period would be five years in exchange for his plea of
 26 guilty; then petitioner's proffered interpretation should prevail.
 27 As such is equally plausible.

1 The Ninth Circuit has further noted that several of it's cases
2 have held that it is petitioner's understanding at the time of the
3 plea that controls. See e.g. United States v. Anderson, supra, 970
4 F. 2d at 607, amended 990 F. 2d 1163 (1993); United States v.
5 Packwood, 848 F. 2d 1009, 1011; United States v. Quan, 789 F. 2d
6 711 (9th Cir. 1986). Which the court has ruled they are not free to
7 disregard this controlling precedent. United States v. Fuente,
8 8 F. 3d 1333 (9th Cir. 1993). In short, the liberty interest from
9 prolonged incarceration is great, and procedures for decreasing
10 erroneous incarceration must be provided.

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11.

PETITIONER MUST BE
PERMITTED TO WITHDRAW HIS PLEA

5 The punishment imposed by the court may not significantly
6 exceed that which the parties agreed on, Cal. Crim. Proc. 1050;
7 People v. Walker, (1991) 54 Cal. 3d 1013, 1024, 1 Cal. Rptr. 902,
8 908. Petitioner would not have plead guilty had he known he would
9 not have a determinate date set as promised by the Court and the
10 respondents, thereby prolonging his period of incarceration without
11 affording him due process. the remedy for this violation would be
12 the withdrawal of his plea.

When the state breaches the express or implied terms of a plea
agreement, a violation of due process occurs. Ashe v. Styles, 67
F. 3d 46, 52 (4th Cir. 1995); United States v. Martin, 25 F. 3d 211,
217. Petitioner's guilty plea was clearly induced by an unkept
promise, and therefore was not free and willing choice of petitioner
and should be set aside by this court. An unkept bargain which has
induced a guilty plea is grounds for relief. Santobello, supra;
Blackledge v. Allison, 431 U.S. 63, 52 L. Ed. 2d 136, 97 S. Ct. 1621
(1997).

111.

PLEA AGREEMENTS ARE CONTRACTS REQUIRING THE
STATE TO LIVE UP TO THEIR PART OF THE CONTRACT

27 Plea agreements contracts and the state's obligations are to
28 be determined by the language of the agreement. Doe v. United States

1 61 F. 3d 693, 701 (7th Cir.) cert. denied, 116 S. Ct. 205; United
 2 States v. De La fuente, 8 F. 3d 1333 (9th Cir. 1993). There can be
 3 no mistake that it was reasonably understood when petitioner
 4 entered his plea that he would have a release date set by the
 5 Department of Corrections and this parole period would be fixed at
 6 five years in exchange for his guilty plea, but he has received
 7 neither benefit.

8 It is well established that the interpretation of plea agree-
 9 ments is rooted in contract law, United States v. Keller, 902 F. 2d
 10 1391, 1393 (9th Cir. 1990), and that each party must receive the
 11 benefit of its bargain. Ashe, supra at 52; United States v. Peglera,
 12 33 F. 3d 412, 413 (4th Cir. 1994). Under the principles of contract
 13 law, a party may avoid the obligation of an agreement gained by
 14 misrepresentation or fraud. United States v. Texarkana Trawlers,
 15 846 F. 2d 297, 304 (5th Cir.) cert. denied, 488 U.S. 943, 109 S. Ct.
 16 369, 102 L. Ed. 2d 358 (1988); United States v. ballis, 28 F. 3d
 17 1399, 1409 (5th Cir. 1994). An any arrangement mutually agreeable
 18 to both parties to a valid contract which has been wholly executed
 19 to their mutual satisfaction leaves no question of consideration of
 20 adjudication. Fox Chicago realty Corp. v. Zukor's Dresse, Inc., 50
 21 Cal. App. 2d 129, 136.

22 Contract interpretation presents a question of law which should
 23 be independtly. Golden West Baseball Co. v. City of Anaheim, (1994)
 24 25 Cal. App. 4th 11, 22, 31 Cal Rptr. 2d 378; Vaillette v. Fireman's
 25 Fund Ins. Co., (1993) 18 Cal. App. 4th 680, 686, 23 Cal. Rptr. 2d
 26 807. A contract must be interpreted to give effect to mutual,
 27 expressed intention of parties. The state, nor the court can now
 28 create for the parties a contract language which one of the parties

1 now wishes was there. Levi Strauss & Co. v. Aetna v. Casualty &
 2 Surely Co., (1986) 184 Cal. App. 3d 1479, 1486, 229 Cal. Rptr. 434;
 3 Ben-Zvi v. Edmar Co., (1995) 40 Cal. App. 4th 468, 47 Cal. Rptr.
 4 2d 12. The court may find that a contract includes an implied term
 5 or convenient.

6 Adequate our due process depends upon the nature of the interest
 7 affected. See Morrissey v. Brewer, 408 U.S. 471, 481-482, 92 S. Ct.
 8 2593, 2600-01, 33 L. Ed. 2d 484 (1972), the more important the
 9 interest and greater the effects of its impairment, greater the
 10 procedural safeguards the state must provide to satisfy due process.

11 Id. at 481, 92 S. Ct. at 2600; Haygood v. Younger, 780 F. 2d 1355,
 12 1356 (9th Cir. 1985). Petitioner's loss of liberty through continual
 13 incarceration falls among the major deprivations in life. After life
 14 itself, no right is more jealously guarded by our constitution, legal
 15 system, and our culture more than freedom.

16 The "contract" principles emerging from these cases are that.
 17 courts will use objective canons of interpretations to - that courts
 18 have some remedial power to enforce plea bargains. Where the
 19 government breaches the a plea bargain, it may be appropriate for
 20 the court to order "specific performance" of the bargain, United
 21 States v. Herrera, 640 F. 2d 958, 960 (9th Cir. 1981); 2W. Lafave &
 22 J. Israel, Criminal Procedure. "When the breach was a failure by
 23 the state to carry out a promise which was fulfillable, then
 24 certainly the petitioner's request for relief should be granted.

25 The respondents now cannot argue that petitioner is not entitled
 26 to relief even if the state breached the petitioner's plea agree-
 27 ment. This argument is meritless. If the court is to accept it,
 28 it would, in effect, allow the state, any time it might have second

1 thoughts about a plea bargain to breach the agreement by reindicting
2 petitioner on greater charges, thereby restoring petitioner's right
3 to trial on those charges. Such a practice, of course, renders the
4 state's plea agreement obligations meaningless. Santobello, 404 U.S.
5 at 262 "When a plea rest in any significant degree on a promise or
6 agreement of the prosecutor, such promise must be fulfilled.

7 For all the aforementioned reasons the petitioner's writ of
8 habeas corpus should be granted.

UNITED STATES DISTRICT COURT
Clerk of the Court
U.S. Courthouse
450 Golden Gate Ave.
San Francisco, CA 94102-3483

LeAndre Johnson, CDCR# D-88755
P.O. Box 4000, (13-M6-Low)
Vacaville, CA 95696-4000

Date: May 27, 2008

E-filing

MMC

CV 08

2883

Re: The enclosed petition, Case No. C-07-5187 MJJ (PR)

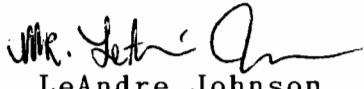
(PR)

Dear Clerk,

previously the petitioner filed a petition for Writ of Habeas Corpus, but it was dismissed for failure to pay the required \$5.00 filing fee. (see attached order) When in fact, he did pay, but for some reason it was not received by your office until after the dismissal order was issued. (see attached letter and copy of this court's payment receipt) Thus, the petitioner is refiling his petition and requesting that the \$5.00 previously paid is considered and received as payment for this petition.

In closing, thank you in advance for all of your time and efforts in this matter. Have a nice day.

Respectfully Submitted,


LeAndre Johnson

In Pro Per

Court Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611013310
Cashier ID: almacah
Transaction Date: 12/07/2007
Payer Name: SANDRA M TOBIAS

WRIT OF HABEAS CORPUS
For: LEANDRE JOHNSON
Amount: \$5.00

CHECK
Check/Money Order Num: 1056
Amt Tendered: \$5.00

Total Due: \$5.00
Total Tendered: \$5.00
Change Amt: \$0.00

087-5187 MJJ (PR)

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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LEANDRE JOHNSON,) No. C 07-5187 MJJ (PR)
Petitioner,) **ORDER OF DISMISSAL**
v.)
D.K. SISTO, Warden,)
Respondent.)

Petitioner filed a pro se petition for a writ of habeas corpus on October 10, 2007. That same day, the court notified petitioner he had neither paid the filing fee nor submitted a completed application for leave to proceed in forma pauperis ("ifp"). Specifically, the notice informed petitioner he had not submitted a certificate of funds in his trust account completed and signed by a prison official, nor had he submitted a copy of his prisoner trust account statement showing transactions for the last six months. A copy of the court's form ifp application was provided to petitioner with the notice, along with a postage paid return envelope and instructions for completing the ifp application, including the filing of a completed certificate of funds form and the requisite trust account statement. Petitioner was informed that if he did not either pay the fee or file the completed ifp application within thirty days the case would be dismissed. No response has been received.

G:\PRO-SE\MJJ\HC.07\johnson.dfp.wpd

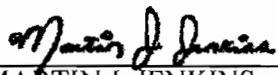
Case 3:07-cv-05187-MJJ Document 3 Filed 11/28/2007 Page 2 of 2

1 As petitioner has neither paid the filing fee nor filed a completed ifp application, this
2 case is hereby DISMISSED without prejudice.

3 The Clerk shall close the file.

4 IT IS SO ORDERED.

5 DATED: 11/26/07


6 MARTIN J. JENKINS
7 United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LEANDRE D. JOHNSON,

Plaintiff,

v.

D.K. SISTO et al,

Defendant.

Case Number: CV07-05187 MJJ

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 28, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Leandre Demund Johnson
CSP-Solano II
Prisoner Id D-88755
P.O. Box 4000
Vacaville, CA 95696

Dated: November 28, 2007


Richard W. Wiking, Clerk
By: R.B. Espinosa, Deputy Clerk

United States District Court
Clerk of the Court
450 Golden Gate Avenue
San Francisco, CA 94102-3483

RECEIVED
63 MAY 6 PH12:21
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA

M

LeAndre Johnson, CDCR#D-88755
P.O. Box 4000, (14-N-5Low)
Vacaville, CA 95696-4000

E-filing

MMC

(PR)

CV 08

2883

Re: Case No. C-07-5187 MJJ (PR).

Dear Clerk,

on December 7, 2007 I paid my \$5.00 required filing fee to process my petition for Writ of Habeas Corpus. In fact, I even received a receipt of payment from this Court (see attached), but as of today's date I have not received anything from this Court. Therefore, can you please check on the status of my case to make sure that I did not slip through the cracks somehow?

In closing, thank you in advance for all of your time and assistance in this matter, both are appreciated very much. Have a nice day.

Sincerely,


LeAndre Johnson

In Pro Per

E-filing

CV 08 2883
MMC
(PR)

EXHIBIT A

1 IN THE MUNICIPAL COURT **FILED**
2 IN THE OAKLAND-PIEDMONT-EMERYVILLE JUDICIAL DISTRICT **ALAMEDA COUNTY**
3

4 THE PEOPLE OF THE)
5 STATE OF CALIFORNIA,)
6)
7 PLAINTIFFS,)
8)
9 VS.) NO. 298092B
10) DEPARTMENT 16
11 LEANDRE DEMUND JOHNSON,) (GUILTY PLEA)
12)
13 DEFENDANT.)
14)

91813A

TRANSCRIPT OF GUILTY PLEA
BEFORE THE HONORABLE JUDGE COURTLAND D. ARNE
APRIL 4, 1988
2:35 P.M.

APPEARANCES:

FOR THE PEOPLE: GENE FRANKLIN
ASSISTANT DISTRICT ATTORNEY

FOR THE DEFENDANT: WILLIAM COLE, ESQ.
APPOINTED DEFENSE ATTORNEY

COURT REPORTER: SONJA VON KAMPERMANN, CSR

1 I N D E X

2 WITNESS

VOIR DIRE EXAMINATION

3 LEANDRE DEMUND JOHNSON

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1 THE COURT: ON THE RECORD. THIS IS DOCKET NO.
2 298092B. THE PEOPLE VERSUS LEANDRE -- HOW DO YOU SAY YOUR
3 MIDDLE NAME?

4 THE WITNESS: DEMUND.

5 THE COURT: LEANDRE DEMUND JOHNSON.

6 AND THE RECORD WILL SHOW THE DEFENDANT IS
7 PRESENT IN COURT WITH HIS COUNSEL, MR. COLE, AND MR. FRANKLIN
8 IS PRESENT FOR THE PEOPLE.

9 AND I UNDERSTAND THAT THERE IS A PROPOSED
10 NEGOTIATED DISPOSITION IN THIS MATTER?

11 MR. FRANKLIN: THAT IS CORRECT, YOUR HONOR.

12 THE COURT: WOULD YOU CARE TO STATE IT FOR
13 THE RECORD?

14 MR. FRANKLIN: YES. I WILL.

15 IT IS THE UNDERSTANDING OF THE PEOPLE THAT
16 MR. JOHNSON IS GOING TO PLEAD TO COUNT ONE OF 187 FIRST
17 DEGREE WITH A USE CLAUSE PLUS TWO COUNTS OF 211.

18 THE COURT: WHICH TWO COUNTS ARE THOSE?

19 MR. FRANKLIN: THOSE TWO COUNTS WOULD BE COUNT
20 TWO AND COUNT FIVE.

21 THE COURT: ALL RIGHT.

22 MR. FRANKLIN: AND IN RETURN FOR THAT PLEA,
23 IT IS AGREED THAT MR. JOHNSON WILL RECEIVE 25 YEARS TO
24 LIFE PLUS -- STRIKE THAT. THAT IS 25 YEARS TO LIFE ON
25 COUNT ONE OF 187 FIRST DEGREE, PLUS TWO YEARS ON THE USE
26 CLAUSE FOR A TOTAL OF 27 YEARS.

27 ANY TIME ON THE 211 MAY BE CONCURRENT TO THE
28 ABOVE SENTENCE.

1 MR. COLE: IN FACT, IT WILL BE.

2 MR. FRANKLIN: IT IS AGREED THAT MR. JOHNSON
3 WILL MAKE AN INITIAL DECLARATION INDICATING HIS INVOLVEMENT
4 AND ANY INVOLVEMENT OF HIS CO-DEFENDANTS.

5 THE COURT: ALL RIGHT. MR. COLE, DOES THAT
6 FULLY STATE ALL OF THE TERMS OF THE PROPOSED DISPOSITION?

7 MR. COLE: THE ROBBERIES WILL BE CONCURRENT?

8 MR. FRANKLIN: THEY WILL BE CONCURRENT.

9 THE COURT: THE RECORD WILL REFLECT THAT.

10 AND, MR. JOHNSON, DO YOU UNDERSTAND THE
11 PROPOSED DISPOSITION OF YOUR CASE?

12 THE WITNESS: YEAH. TO THE POINT WHERE SAY
13 WHEN HE SAID TELL HIM ABOUT WHAT HAPPENED.

14 THE COURT: ALL RIGHT. WHAT IS IT THAT YOU
15 WANT TO SAY ABOUT THAT?

16 THE WITNESS: I THOUGHT I WAS COMING TO PLEAD
17 GUILTY.

18 THE COURT: AS I UNDERSTAND IT, PART OF THE
19 PROPOSED DISPOSITION IS, I TAKE IT, YOU ARE GOING TO
20 DISMISS SOME OTHER COUNTS AGAINST THIS DEFENDANT: COUNT THREE,
21 FOUR, SIX, SEVEN, AND EIGHT IN RETURN, AND STRIKE THE ARMED
22 AND SPECIAL CIRCUMSTANCES CLAUSES?

23 MR. FRANKLIN: THAT'S CORRECT, YOUR HONOR.

24 MR. COLE: LET ME HAVE A WORD WITH MY CLIENT.

25 (WHEREUPON, A SHORT DISCUSSION
26 WAS HELD OFF THE RECORD WITH
27 MR. COLE AND LEANDRE JOHNSON.)

28 THE COURT: ALL RIGHT.

MR. COLE: WE ARE READY TO PROCEED.

1 THE COURT: 'MR. JOHNSON, HAVE YOU DISCUSSED
2 ALL OF THIS WITH YOUR ATTORNEY, MR. COLE?

3 THE WITNESS: YES. I HAVE.

4 THE COURT: AND YOU UNDERSTAND THE PROPOSED
5 DISPOSITION OF YOUR CASE?

6 THE WITNESS: YEAH. TO A CERTAIN EXTENT.

7 THE COURT: TO WHAT EXTENT DO YOU NOT
8 UNDERSTAND?

9 THE WITNESS: WHAT AM I SUPPOSED TO TELL, WHAT
10 HAPPENED?

11 THE COURT: THE DISTRICT ATTORNEY WILL BE
12 ASKING YOU SOME QUESTIONS IN THAT REGARD. YES.

13 THE WITNESS: ALL RIGHT.

14 THE COURT: DO YOU UNDERSTAND?

15 THE WITNESS: YES.

16 THE COURT: ALL RIGHT. AS YOUR CASE SITS
17 BEFORE ME AT THIS MOMENT, YOU HAVE THE RIGHT TO HAVE A
18 PRELIMINARY EXAMINATION ON THESE CHARGES.

19 DO YOU UNDERSTAND WHAT A PRELIMINARY EXAMINATION
20 IS?

21 THE WITNESS: YES.

22 THE COURT: YOU HAVE DISCUSSED THAT WITH
23 MR. COLE?

24 THE WITNESS: (WITNESS NODS HEAD.)

25 THE COURT: IS THAT CORRECT?

26 THE WITNESS: YES.

27 THE COURT: ALL RIGHT.

28 MR. COLE: HE HAS DISCUSSED ALL OF THESE

1 MATTERS WITH MR. STRELLIS AS LATE AS THIS MORNING.

2 THE COURT: DO YOU UNDERSTAND THAT IF YOU ENTER
3 A PLEA OF GUILTY TO THESE CHARGES THIS AFTERNOON, THAT
4 THE FIRST RIGHT THAT YOU ARE GOING TO GIVE UP IS YOUR RIGHT
5 TO HAVE A PRELIMINARY EXAMINATION?

6 DO YOU UNDERSTAND THAT?

7 THE WITNESS: YES. I UNDERSTAND THAT.

8 THE COURT: DO YOU GIVE UP THAT RIGHT?

9 THE WITNESS: I KNOW THAT. YEAH.

10 THE COURT: WHEN YOU SAY "YEAH", DO YOU MEAN
11 "YES"?

12 THE WITNESS: YES.

13 THE COURT: ALL RIGHT. AT THE PRELIMINARY
14 EXAMINATION YOU WOULD HAVE THE RIGHT TO SEE, TO HEAR, AND
15 TO QUESTION ALL OF THE WITNESSES CALLED TO COURT TO TESTIFY
16 IN THAT PROCEEDING.

17 I AM SURE THAT IT'S OBVIOUS TO YOU THAT IF
18 THERE IS NO PRELIMINARY EXAMINATION, NO ONE WILL TESTIFY
19 THERE. AND, THEREFORE, BY PLEADING GUILTY, YOU ARE ALSO
20 GIVING UP THAT RIGHT?

21 DO YOU UNDERSTAND THAT?

22 THE WITNESS: UM-HUM.

23 THE COURT: IS THAT A "YES"?

24 THE WITNESS: YES.

25 THE COURT: ALL RIGHT. AND DO YOU GIVE UP
26 THAT RIGHT?

27 THE WITNESS: YES.

28 THE COURT: IF YOU ARE HELD TO ANSWER TO THESE

1 CHARGES IN THE SUPERIOR COURT, YOU WOULD HAVE THE RIGHT TO
2 HAVE A TRAIL EITHER BEFORE A JUDGE OR A JURY. HOWEVER, IF
3 YOU PLEAD GUILTY TODAY, YOU ARE GIVING UP YOUR RIGHT TO A
4 TRIAL EITHER BEFORE A JUDGE OR A JURY BECAUSE THERE WILL
5 NOT BE ANY TRIAL AT ALL.

6 DO YOU UNDERSTAND THAT?

7 THE WITNESS: YES.

8 THE COURT: AND DO YOU GIVE UP THAT RIGHT?

9 THE WITNESS: YES.

10 THE COURT: AGAIN, AT THE TIME OF TRIAL YOU
11 WOULD HAVE THE RIGHT TO SEE, TO HEAR, AND TO QUESTION ALL
12 OF THE WITNESSES CALLED TO COURT TO TESTIFY IN THAT
13 PROCEEDING.

14 ONCE AGAIN, I AM SURE THAT IT'S EVIDENT TO YOU
15 THAT IF THERE IS NO TRIAL, NO ONE WILL TESTIFY THERE.
16 AND, THEREFORE, BY PLEADING GUILTY, YOU ARE ALSO GIVING UP
17 THAT RIGHT.

18 DO YOU UNDERSTAND THAT?

19 THE WITNESS: YES.

20 THE COURT: AND DO YOU GIVE UP THAT RIGHT?

21 THE WITNESS: YES.

22 THE COURT: WHENEVER YOU PLEAD GUILTY, YOU ARE
23 GIVING UP YOUR RIGHT TO REMAIN SILENT AND YOUR PRIVILEGE
24 AGAINST SELF-INCRIMINATION, AND YOU ARE CONVICTING YOURSELF
25 OF THESE OFFENSES BY YOUR OWN PLEA OF GUILTY TO EACH CHARGE.

26 DO YOU UNDERSTAND THAT?

27 THE WITNESS: YES.

28 THE COURT: AND DO YOU GIVE UP THESE RIGHTS?

THE WITNESS: YES.

THE COURT: NOW, WHEN YOU APPEAR IN THE SUPERIOR COURT, THEN PURSUANT TO THIS AGREEMENT, THE JUDGE IS GOING TO SENTENCE YOU ON COUNT ONE TO 25 YEARS TO LIFE.

DO YOU UNDERSTAND THAT?

THE WITNESS: (WITNESS NODS HEAD.)

THE COURT: DO YOU UNDERSTAND THAT?

THE WITNESS: YES.

THE COURT: AND BASED UPON THE ADMISSION OF THE
USE CLAUSE, YOU WILL RECEIVE AN ADDITIONAL TWO YEARS.

DO YOU UNDERSTAND THAT?

THE WITNESS: YES.

THE COURT: AND AT THE TIME THE JUDGE SENTENCES
YOU ON THE COUNTS OF ROBBERY, IT WILL RUN CONCURRENT AT THE
SAME TIME AS THE OTHER SENTENCE.

DO YOU UNDERSTAND THAT?

THE WITNESS: YES.

THE COURT: WHEN YOU ARE RELEASED FROM STATE PRISON, YOU WILL BE ON PAROLE. AND IT IS AT LEAST THEORETICALLY POSSIBLE TO BE ON PAROLE FOR AS LONG AS FIVE YEARS.

IF AT ANY TIME WHILE ON PAROLE YOU VIOLATE
YOUR PAROLE, YOU CAN BE RETURNED TO STATE PRISON FOR UP TO
ONE YEAR FOR EACH SEPARATE VIOLATION.

DO YOU UNDERSTAND THAT?

THE WITNESS: YES.

THE COURT: I WANT TO POINT OUT TO YOU THAT THE
THREE CHARGES ARE ALL FELONY CRIMES, AND SHOULD YOU BE

1 CHARGED WITH A FELONY CRIME IN THE FUTURE, THESE
2 CONVICTIONS CAN BE CHARGED AS PRIOR CONVICTIONS ON ANY NEW
3 COMPLAINT.

4 AND IF YOU WERE CONVICTED OF A NEW FELONY IN
5 THE FUTURE AND THESE PRIORS WERE PROVEN, THAT COULD MAKE
6 ANY FUTURE PUNISHMENT MORE SEVERE.

7 DO YOU UNDERSTAND THAT?

8 THE WITNESS: YES.

9 THE COURT: MOST PARTICULARLY, SINCE THESE ARE
10 SERIOUS FELONIES, IF YOU ARE CHARGED IN THE FUTURE WITH A
11 SERIOUS CRIME AND CONVICTED OF THAT CRIME AND THESE
12 PRIORS ARE PROVEN, THAT WOULD INCREASE ANY FUTURE SENTENCE
13 BY FIVE YEARS.

14 DO YOU UNDERSTAND THAT?

15 THE WITNESS: YES.

16 THE COURT: ALSO, I WANT TO INFORM YOU THAT IF
17 YOU ARE NOT A CITIZEN OF THE UNITED STATES, A CONVICTION OF
18 A FELONY CRIME CAN AFFECT YOUR RIGHT TO BECOME A NATURALIZED
19 CITIZEN OF THIS COUNTRY AS WELL AS IT CAN AFFECT YOUR
20 RESIDENCY STATUS HERE.

21 DO YOU UNDERSTAND THAT?

22 THE WITNESS: YES.

23 THE COURT: HAS ANYONE MADE YOU ANY PROMISES IN
24 CONNECTION WITH YOUR PLEA TO THESE CHARGES THAT HAVE NOT
25 BEEN STATED HERE IN OPEN COURT AND IN FRONT OF ME THIS
26 AFTERNOON AND ON THE RECORD?

27 THE WITNESS: CERTAIN CIRCUMSTANCES WOULD BE
28 DROPPED?

1 THE COURT: THEY WOULD MOVE THE COURT TO DROP
2 THE CHARGES.

3 THE WITNESS: YEAH.

4 THE COURT: HAVE ANY PROMISES AT ALL BEEN MADE
5 TO YOU WHICH I HAVEN'T HEARD ABOUT THIS AFTERNOON ON THE
6 RECORD?

7 THE WITNESS: NO, NOT REALLY.

8 HOW MANY YEARS WOULD I DO OF THAT?

9 THE COURT: YOUR ATTORNEY CAN ADVISE YOU.

10 MR. COLE: THAT ESSENTIALLY IS UP TO THE
11 DEPARTMENT OF CORRECTIONS. AND WE DISCUSSED THAT CURRENTLY
12 WHAT THE ROUGH ESTIMATE IS.

13 BUT THE COURT IS NOT IN CHARGE OF THAT. SO,
14 THAT IS SOMETHING THAT IS BETWEEN YOU AND THE DEPARTMENT
15 OF CORRECTIONS ONCE YOU ENTER THAT SYSTEM.

16 AND I BELIEVE YOU KNOW AS MUCH ABOUT THAT AS
17 ANYBODY BECAUSE THAT IS SOMETHING THE COURT CAN'T ADDRESS
18 BECAUSE IT'S NOT UP TO THE JUDGE.

19 AND YOU WILL BE RELEASED IN DUE COURSE OF
20 PAROLE ESSENTIALLY, AND THAT WOULD BE UP TO THE DEPARTMENT
21 OF CORRECTIONS. AND THAT WOULD DEPEND ON YOUR SENTENCE AND
22 CONDUCT IN PRISON.

23 THE WITNESS: ALL RIGHT.

24 THE COURT: ALL RIGHT. NOW, MY QUESTION TO
25 YOU IS: HAS ANYONE MADE YOU ANY PROMISES IN CONNECTION WITH
26 PLEADING GUILTY TO THESE CHARGES TODAY THAT I HAVEN'T HEARD
27 ABOUT RIGHT HERE IN OPEN COURT THIS AFTERNOON ON THE
28 RECORD?

1 THE WITNESS: THAT I WOULD HAVE A RELEASE DATE?

2 THE COURT: WELL, YOU WILL, INDEED. THAT IS AN
3 AUTOMATIC WITH THE DEPARTMENT OF CORRECTIONS. THEY WILL
4 SET THAT DATE.

5 I WANT TO KNOW IF ANYONE HAS MADE ANY PROMISES
6 TO YOU TO GET YOU TO PLEAD GUILTY TO THESE CHARGES THAT I
7 HAVEN'T BEEN TOLD ABOUT HERE IN OPEN COURT AND ON THE
8 RECORD?

9 THE WITNESS: NO.

10 THE COURT: HAS ANYONE THREATENED YOU IN ANY
11 MANNER TO MAKE YOU CHANGE YOUR PLEA?

12 THE WITNESS: NO.

13 THE COURT: ARE YOU ENTERING INTO THIS PLEA
14 FREELY AND VOLUNTARILY?

15 THE WITNESS: YES.

16 THE COURT: ALL RIGHT. AND, MR. COLE, ARE YOU
17 STIPULATING THAT THERE IS A BASIS IN FACT FOR THE
18 DEFENDANT'S PLEA OF GUILTY THEN TO COUNT ONE AND TO COUNT
19 TWO AND FIVE OF THIS COMPLAINT?

20 MR. FRANKLIN: BEFORE THE COURT PROCEEDS, I WOULD
21 LIKE TO KNOW IF THE COURT HAS ADMONISHED MR. JOHNSON ABOUT
22 THE FELONY ENHANCEMENT?

23 THE COURT: NO. JUST THE SERIOUS --

24 MR. FRANKLIN: IT'S MY UNDERSTANDING THAT ALSO
25 THERE IS A VIOLENT FELONY ENHANCEMENT.

26 THE COURT: YOU MAY COVER THAT WHEN YOU COVER
27 YOUR OWN QUESTIONS.

28 ARE YOU STIPULATING THAT THERE IS A BASIS IN

1 FACT FOR THE DEFENDANT'S PLEA OF GUILTY TO COUNT ONE, TWO,
2 AND FIVE?

3 MR. COLE: SO STIPULATED. YES.

4 MR. FRANKLIN: YES.

5 THE COURT: YOU ARE JOINING IN THAT?

6 MR. FRANKLIN: SO STIPULATED.

7 THE COURT: ALL RIGHT. ONE OTHER MATTER,

8 MR. JOHNSON, YOU DO UNDERSTAND THAT YOU WOULD ALSO HAVE
9 THE RIGHT TO HAVE A JURY DETERMINE WHETHER OR NOT YOU DID,
10 IN FACT, PERSONALLY USE A FIREARM TO WIT: A SHOTGUN IN
11 CONNECTION WITH THE COMMISSION OF THE FELONY OF 187 CHARGING
12 YOU IN COUNT ONE BEING A FELONY OF MURDER.

13 DO YOU UNDERSTAND THAT?

14 THE WITNESS: YES.

15 THE COURT: AND YOU REALIZE THAT IF YOU PLEAD
16 GUILTY THIS AFTERNOON THAT YOU ARE GIVING UP YOUR RIGHT TO
17 HAVE THE JURY MAKE THAT DETERMINATION?

18 THE WITNESS: YES.

19 THE COURT: DO YOU GIVE UP THAT RIGHT?

20 THE WITNESS: YES.

21 THE COURT: IN THAT REGARD, YOU WOULD HAVE THE
22 RIGHT TO SEE, TO HEAR, AND TO QUESTION ANY WITNESSES WHO
23 WERE CALLED TO TESTIFY IN THAT MATTER.

24 I AM SURE THAT IT'S OBVIOUS TO YOU THAT NO ONE
25 IS GOING TO BE CALLED TO TESTIFY IF YOU PLEAD GUILTY BECAUSE
26 THERE WON'T BE ANY TRIAL?

27 THE WITNESS: YES.

28 THE COURT: AND DO YOU UNDERSTAND THAT?

1 THE WITNESS: YES.

2 THE COURT: AND DO YOU GIVE UP THAT RIGHT?

3 THE WITNESS: YES.

4 THE COURT: IN CONNECTION WITH THE USE CLAUSE,
5 YOU ARE ALSO GIVING UP YOUR RIGHT TO REMAIN SILENT AND YOUR
6 PRIVILEGE AGAINST SELF-INCrimINATION.

7 DO YOU UNDERSTAND THAT?

8 THE WITNESS: YES.

9 THE COURT: DO YOU GIVE UP THOSE RIGHTS?

10 THE WITNESS: YES.

11 THE COURT: ALL RIGHT. VERY WELL.

12 DID YOU WANT TO VOIR DIRE THE DEFENDANT FURTHER,
13 COUNSEL?

14 MR. FRANKLIN: ONLY TO THE EXTENT, YOUR HONOR,
15 OF THE VIOLENT FELONY ENHANCEMENT AS PROVIDED BY PENAL CODE
16 SECTION 667.5A WHICH PROVIDES THAT ONE OF THE NEW OFFENSES
17 IS ONE OF A VIOLENT FELONY SPECIFIED IN SUBSECTION C IN
18 ADDITION AND CONSECUTIVE TO ANY OTHER PRISON TERMS THAT
19 THE COURT SHALL IMPOSE A THREE YEAR TERM FOR EACH PRIOR
20 SEPARATE PRISON TERM SERVED BY THE DEFENDANT WHERE THE
21 PRIOR WAS ONE OF A VIOLENT FELONY SPECIFIED IN SUBDIVISION C
22 WHICH INCLUDES PENAL CODE SECTION 187 AND PENAL CODE SECTION
23 211.

24 THE COURT: I TAKE IT, IF THE DEFENDANT WERE
25 CONVICTED OF A SERIOUS FELONY IN THE FUTURE, THAT HIS
26 SENTENCE WOULD BE ENHANCED BY A TOTAL OF EIGHT YEARS?

27 MR. FRANKLIN: THAT'S CORRECT, YOUR HONOR.

28 THE COURT: DO YOU UNDERSTAND THAT, MR. JOHNSON?

1 THE WITNESS: (WITNESS NODS HEAD.)

2 THE COURT: IS THAT A "YES"?

3 THE WITNESS: YES.

4 THE COURT: ALL RIGHT. NOW, YOU HAD SOME OTHER
5 QUESTIONS THAT YOU WANTED TO ASK THE DEFENDANT BEFORE I
6 TAKE HIS PLEA?

7 MR. FRANKLIN: YES. I WOULD LIKE TO HAVE THE
8 DEFENDANT SWORN TO GO THROUGH THESE QUESTIONS THAT I HAVE.

9 THE COURT: ALL RIGHT. THE CLERK WILL SWEAR
10 THE DEFENDANT.

11 LEANDRE DEMUND JOHNSON, SWORN

12 VOIR DIRE EXAMINATION

13 BY MR. FRANKLIN:

14 Q. MR. JOHNSON, YOU HAVE PREVIOUSLY TALKED WITH
15 SOMEONE FROM MY OFFICE REGARDING THE EVENTS WHICH OCCURRED
16 ON OCTOBER 21ST OF 1987; IS THAT CORRECT?

17 A. YES.

18 Q. THE SHOOTING THAT OCCURRED AT KNOWLAND ZOO?

19 A. YES.

20 Q. I WOULD LIKE FOR YOU TO TELL ME NOW EXACTLY
21 WHAT YOUR INVOLVEMENT WAS IN THAT SHOOTING AND RESULTING
22 IN THE DEATH OF GARY BRADFORD ON OCTOBER 21ST, 1987?

23 A. I ACCIDENTALLY SHOT HIM.

24 Q. ON OCTOBER 21ST, WHAT TIME DID YOU ARRIVE AT THE
25 ZOO?

26 A. I AM NOT SURE.

27 Q. WERE YOU WITH SOMEONE WHEN YOU ARRIVED AT THE
28 ZOO?

1 A. YES.

2 Q. WHO WERE YOU WITH?

3 A. MY FRIEND, STEVE MONGER.

4 Q. NOW, HOW DID YOU GET TO THE ZOO THAT DAY?

5 A. HIS CAR.

6 Q. WHEN DID YOU FIRST SEE GARY BRADFORD?

7 A. I AM NOT SURE.

8 Q. WAS IT AT THE ZOO?

9 A. YES.

10 Q. WHAT WAS HE DOING WHEN YOU FIRST SAW HIM?

11 A. HE WAS USING THE TELEPHONE.

12 Q. DID YOU OVERHEAR HIS CONVERSATION?

13 A. YES.

14 Q. CAN YOU RECALL ANYTHING THAT YOU MIGHT HAVE
15 SAID?

16 A. NOT REALLY.

17 Q. DID YOU AND MR. MONGER HAVE A PARTICULAR PURPOSE
18 FOR BEING AT THE ZOO ON OCTOBER 21ST?

19 A. TO SEE THE ANIMALS.

20 Q. WHEN YOU SAW MR. BRADFORD, DID YOU AND MR. MONGER
21 DISCUSS MR. BRADFORD IN ANY WAY?

22 A. NO.

23 Q. YOU SAY YOU DON'T RECALL HEARING ANY OF THE
24 CONVERSATION THAT TOOK PLACE ON THE PHONE?

25 A. YES. I DID HEAR IT, BUT I AM NOT SURE WHAT IT
26 WAS.

27 Q. CAN YOU RECALL ANY OF IT AT ALL?

28 A. YEAH. IT WAS ABOUT DRUGS.

1 Q. AFTER HEARING MR. BRADFORD DISCUSS DRUGS, DID
2 YOU AND MR. MONGER DECIDE TO DO SOMETHING?

3 A. YEAH.

4 Q. AND WHAT WAS THAT?

5 A. TO TALK TO HIM.

6 Q. DID YOU TALK TO HIM AT THAT POINT?

7 A. NO.

8 Q. WHAT DID YOU DO?

9 A. I ACCIDENTALLY SHOT HIM.

10 Q. YOU WHAT?

11 A. I ACCIDENTALLY SHOT HIM.

12 Q. NOW, BEFORE YOU SHOT HIM, AS YOU JUST
13 TESTIFIED, DID YOU DECIDE TO GO BACK TO YOUR CAR?

14 A. YEAH.

15 Q. FOR WHAT PURPOSE?

16 A. TO GET WEAPONS.

17 Q. WERE THERE WEAPONS IN YOUR CAR?

18 A. YES.

19 Q. WHAT KIND OF WEAPONS DID YOU AND MR. MONGER
20 GET FROM YOUR CAR?

21 A. A SHOTGUN.

22 Q. WHO TOOK THE SHOTGUN?

23 A. ME.

24 Q. DID MR. MONGER ALSO TAKE A WEAPON?

25 A. YES. HE HAD A BAT.

26 Q. WHAT KIND OF BAT WAS IT?

27 A. AN ALUMINUM BAT.

28 Q. AFTER TAKING THESE WEAPONS OUT OF THE CAR,

1 WHAT DID YOU AND MR. MONGER DO?

2 A. WE ASSAULTED HIM.

3 Q. DID YOU GO BACK TO THE ZOO?

4 A. YES.

5 Q. WHERE WAS YOUR CAR PARKED?

6 A. I AM NOT SURE.

7 Q. WAS IT OUTSIDE OF THE ZOO GROUNDS OR ON THE
8 ZOO GROUNDS?

9 A. ON THE ZOO'S GROUNDS.

10 Q. WHEN YOU WENT BACK TO THE CAR -- STRIKE THAT.
11 ABOUT WHAT TIME OF DAY WAS THIS, MR. JOHNSON?

12 A. I AM NOT SURE.

13 Q. WAS IT MORNING, AFTERNOON, OR EVENING?

14 A. AFTERNOON.

15 Q. WAS IT STILL LIGHT OUT?

16 A. YEAH.

17 Q. NOW, WHEN YOU GOT BACK TO THE ZOO, AND THAT IS
18 WHERE MR. BRADFORD WAS, WHERE WAS MR. BRADFORD WHEN YOU GOT
19 THERE?

20 A. ON THE TELEPHONE.

21 Q. WHEN YOU GOT BACK, WHAT DID YOU DO, YOU AND
22 MR. MONGER?

23 A. WE WENT UP TO HIM, AND HE GOT SHOT.

24 Q. DID YOU ASK HIM -- STRIKE THAT.

25 WHEN YOU GOT BACK, DID YOU SAY ANYTHING TO
26 MR. BRADFORD BEFORE YOU SHOT HIM?

27 A. YEAH.

28 Q. WHAT DID YOU SAY TO HIM?

1 A. "HANG UP THE TELEPHONE."

2 Q. WHO SAID THAT?

3 A. I AM NOT SURE.

4 Q. WHAT DID MR. BRADFORD DO?

5 A. HUNG UP THE TELEPHONE.

6 Q. AT SOME POINT DID YOU SHOW HIM THE BAT AND
7 THE GUN BEFORE YOU SHOT HIM?

8 A. HE SEEN IT.

9 Q. YOU HAD IT OUT IN THE OPEN?

10 A. (NODS HEAD.)

11 Q. DID YOU SAY ANYTHING TO HIM AFTER HE HUNG UP
12 THE PHONE?

13 A. NO.

14 Q. DID MR. MONGER SAY ANYTHING TO HIM?

15 A. NO.

16 Q. SO, IT'S MY UNDERSTANDING IT'S YOUR TESTIMONY
17 THAT HE HUNG UP THE PHONE, AND YOU IMMEDIATELY SHOT HIM?

18 A. AFTER HE STARTED HITTING HIM WITH THE BAT.

19 Q. WHO HIT HIM WITH THE BAT?

20 A. STEVE.

21 Q. DID HE SAY ANYTHING TO HIM BEFORE HE HIT HIM
22 WITH THE BAT?

23 A. I AM NOT SURE. IT'S BEEN FIVE MONTHS AGO.

24 Q. I UNDERSTAND THAT, MR. JOHNSON.

25 DID YOU ASK MR. BRADFORD FOR MONEY?

26 A. NO.

27 Q. DID MR. MONGER ASK HIM FOR MONEY?

28 A. NO.

1 Q. DID YOU GO BACK WITH THE WEAPONS THAT YOU HAD
2 TAKEN FROM THE CAR TO ROB MR. BRADFORD?

3 A. DID WE DO WHAT?

4 Q. DID YOU GO BACK -- STRIKE THAT.

5 DID YOU TAKE THE WEAPONS OUT OF THE CAR, YOU WITH
6 THE SHOTGUN AND MR. MONGER WITH THE BAT? DID YOU GO BACK
7 WITH THE INTENT OF ROBBING MR. BRADFORD, THE GUY YOU SAW
8 ON THE PHONE?

9 A. YES.

10 Q. DID YOU AND MR. MONGER DISCUSS ROBBING
11 MR. BRADFORD BEFORE YOU GOT BACK TO HIM WITH THE WEAPONS?

12 A. NO. WE JUST SAID WE WAS GOING TO HIT HIM.

13 Q. WHEN YOU AND MR. MONGER FIRST HEARD MR. BRADFORD
14 ON THE TELEPHONE DISCUSSING POSSIBLE DRUGS, DID YOU AND
15 MR. MONGER SAY ANYTHING BETWEEN THE TWO OF YOU ABOUT
16 GETTING THE WEAPONS AND GOING BACK?

17 A. I AM NOT SURE.

18 Q. WHO DISCUSSED GOING BACK TO THE CAR TO GET THE
19 WEAPONS?

20 A. MONGER.

21 Q. WHAT DID HE SAY?

22 A. LET'S GO BACK TO THE CAR.

23 Q. DID HE SAY FOR WHAT PURPOSE?

24 A. YES. TO GET THE WEAPONS.

25 Q. AND WHAT DID HE SAY ABOUT WHAT YOU WERE GOING
26 TO DO WITH THE WEAPONS AFTER YOU GOT THEM OUT OF THE CAR?

27 A. SCARE HIM.

28 Q. WHY DID YOU AND MR. MONGER WANT TO SCARE HIM?

1 A. EXCUSE ME?

2 Q. WHY DID YOU -- STRIKE THAT.

3 DID YOU AND MR. MONGER DISCUSS WHY YOU WANTED
4 TO SCARE MR. BRADFORD?

5 A. I CAN'T REMEMBER.

6 Q. DID YOU PLAN, MEANING DID YOU AND MR. MONGER
7 DISCUSS ROBBING MR. BRADFORD IN ADDITION TO SCARING HIM?

8 A. NO. I AM NOT SURE.

9 Q. DID YOU ASK MR. BRADFORD FOR MONEY WHEN YOU
10 GOT BACK?

11 A. NO.

12 Q. DO YOU RECALL IF EITHER YOU OR MR. MONGER SAID
13 ANYTHING TO MR. BRADFORD BEFORE YOU SHOT HIM?

14 A. NO.

15 MR. FRANKLIN: CAN WE GO OFF THE RECORD FOR
16 JUST A MOMENT?

17 THE COURT: YOU MAY.

18 (WHEREUPON, A SHORT DISCUSSION
19 WAS HELD OFF THE RECORD BETWEEN
MR. FRANKLIN AND THE COURT.)

20 MR. FRANKLIN: ON THE RECORD.

21 MR. COLE: JUST A MOMENT, JUST ONE FURTHER
22 MOMENT.

23 (WHEREUPON, A SHORT DISCUSSION
24 WAS HELD OFF THE RECORD BETWEEN
MR. COLE AND MR. JOHNSON.)

25 BY MR. FRANKLIN:

26 Q. NOW, MR. JOHNSON, WHEN YOU AND MR. MONGER GOT
27 BACK TO THE ZOO AND YOU HAD THE SHOTGUN AND MR. MONGER HAD
28 THE BAT, WHO SPOKE FIRST?

1 A. I AM NOT SURE.

2 Q. NOW, YOU TESTIFIED THAT AT SOME POINT MR. MOGNER
3 USED THE BAT TO STRIKE MR. BRADFORD; IS THAT RIGHT?

4 A. YES.

5 Q. WHERE DID HE STRIKE HIM?

6 A. ACROSS THE LEGS.

7 Q. WHY DID HE STRIKE HIM?

8 A. I DON'T KNOW. I DON'T REMEMBER.

9 Q. ON OCTOBER 21ST WHERE WERE YOU COMING FROM WHEN
10 YOU WENT TO THE ZOO, MR. JOHNSON?

11 A. COMING FROM HOME.

12 Q. WHERE IS THAT?

13 A. SACRAMENTO.

14 Q. WHERE DID YOU MEET UP WITH MR. MONGER THAT DAY?

15 A. AT MY HOUSE.

16 Q. IN SACRAMENTO?

17 A. YES.

18 Q. AND THE TWO OF YOU GOT TOGETHER AND DECIDED
19 TO GO TO OAKLAND; IS THAT RIGHT?

20 A. YES.

21 Q. WHY DID YOU DECIDE TO COME TO OAKLAND?

22 A. TO GO SEE MY MOTHER.

23 Q. IS THERE ANY OTHER REASON THAT YOU CAME TO OAKLAND
24 THAT DAY?

25 A. NO.

26 Q. DID YOU AND MR. MONGER DISCUSS POSSIBLY ROBBING
27 SOME DRUG DEALERS THAT DAY?

28 A. I AM NOT SURE.

1 MR. COLE: JUST A MOMENT.

2 (WHEREUPON, A SHORT DISCUSSION
3 WAS HELD OFF THE RECORD BETWEEN
4 MR. COLE AND MR. JOHNSON.)

5 MR. COLE: ON THE RECORD. WHY DON'T YOU ASK
6 HIM THAT QUESTION AGAIN.

7 MR. FRANKLIN: WOULD YOU REPEAT THE QUESTION
8 PLEASE?

9 (WHEREUPON, THE QUESTION WAS READ
10 BACK BY THE REPORTER.)

11 THE WITNESS: YES.

12 BY MR. FRANKLIN:

13 Q. WHERE WAS THAT? WHERE DID THAT DISCUSSION TAKE
14 PLACE?

15 A. I AM NOT SURE.

16 Q. WAS IT IN SACRAMENTO?

17 A. YEAH.

18 Q. NOW, WHEN YOU GOT BACK TO THE ZOO -- STRIKE THAT.
19 WHEN YOU AND MR. MONGER APPROACHED MR. BRADFORD,
20 YOU HAD -- ON THE SECOND OCCASION WHEN YOU HAD THE SHOTGUN
21 AND HE HAD THE BAT, WAS MR. MONGER STRIKING MR. BRADFORD
22 BECAUSE MR. BRADFORD WAS RESISTING GIVING HIM ANY MONEY?

23 A. HE DIDN'T ASK FOR MONEY.

24 Q. WHAT DID HE ASK FOR?

25 A. HE JUST TOLD HIM, "BE STILL" OR SOMETHING.

26 Q. DID HE TELL HIM WHY HE WANTED HIM TO BE STILL?

27 A. NO.

28 Q. AFTER HE, MR. MONGER, TOLD MR. BRADFORD TO BE
STILL, HE BEGAN TO HIT HIM WITH THE BAT; IS THAT CORRECT?

1 A. YES.

2 Q. NOW, YOU TESTIFIED THAT YOU AND MR. MONGER HAD
3 DISCUSSED COMING DOWN TO OAKLAND TO ROB SOME DRUG DEALERS;
4 IS THAT CORRECT?

5 A. YES.

6 Q. NOW, WAS IT YOUR UNDERSTANDING AND MR. MONGER'S
7 UNDERSTANDING THAT MR. BRADFORD WAS A DRUG DEALER?

8 A. EXCUSE ME?

9 Q. WAS IT YOUR UNDERSTANDING THAT MR. BRADFORD,
10 GARY BRADFORD, WAS A DRUG DEALER?

11 A. YES.

12 Q. BECAUSE YOU HEARD THE CONVERSATION OVER THE
13 PHONE?

14 A. YES.

15 Q. AND YOU AND MR. MONGER WENT BACK TO THE CAR
16 WITH THE INTENT OF GETTING WEAPONS OUT TO ROB MR. BRADFORD;
17 IS THAT CORRECT?

18 A. YES.

19 Q. NOW, YOU SAID THAT MR. MONGER HIT MR. BRADFORD
20 WITH THE BAT. DID MR. BRADFORD BEGIN TO RESIST AT THAT
21 POINT?

22 A. YES.

23 Q. IS THAT WHEN YOU SHOT HIM?

24 A. YES.

25 Q. WHAT DID YOU AND MR. MONGER DO AFTER YOU SHOT
26 MR. BRADFORD?

27 A. HE RAN.

28 Q. YOU WENT BACK TO THE CAR?

1 A. YES.

2 Q. AND WHO DROVE?

3 A. MONGER DROVE.

4 Q. WE WENT TO SAN JOSE.

5 Q. DID YOU GET IN THE CAR ALSO?

6 A. YES.

7 Q. ON THE RIGHT PASSENGER SIDE?

8 A. YES.

9 Q. AND YOU WENT TO SAN JOSE?

10 A. YES.

11 Q. DID EITHER OF YOU DISCUSS WHAT JUST HAD
12 OCCURRED AT THE ZOO?

13 A. NO.

14 Q. WHAT DID YOU DO WITH THE BAT AND THE GUN AFTER
15 YOU GOT TO SAN JOSE?

16 A. PUT IT AWAY.

17 Q. WHERE WAS THAT?

18 A. IN THE CASE.

19 Q. YOU HAD A CASE?

20 A. YES.

21 Q. WHEN YOU LEFT THE ZOO, WHERE WAS THE CASE?

22 A. I AM NOT SURE.

23 Q. WAS IT IN THE CAR?

24 A. YES. IT WAS.

25 Q. NOW, IS IT CORRECT TO SAY THAT YOU KEPT THE
26 BAT AND THE GUN IN THE PASSENGER COMPARTMENT OF THE CAR
27 UNTIL YOU GOT TO SAN JOSE?

28 A. I DON'T KNOW.

1 Q. DID YOU MAKE ANY STOPS ALONG THE WAY TO SAN JOSE?

2 A. NO.

3 Q. WHEN YOU GOT TO SAN JOSE WHAT DID YOU DO WITH
4 THE BAT AND THE SHOTGUN?

5 A. PUT IT AWAY.

6 Q. OKAY. WHEN YOU SAY "PUT IT AWAY", DOES THAT
7 MEAN YOU PUT THE GUN INTO SOME SORT OF CASE?

8 A. YES.

9 Q. AND YOU PUT THE CASE IN THE TRUNK OF THE CAR?

10 A. NO.

11 Q. WHERE DID YOU PUT THE CASE?

12 A. ON THE FLOOR.

13 Q. THE FRONT FLOOR OR THE BACK?

14 A. THE FRONT FLOOR.

15 Q. WHERE DID YOU PUT THE BASEBALL BAT?

16 A. I DON'T KNOW. I DID NOT HAVE IT.

17 Q. NOW, MR. JOHNSON, AS TO THE SECOND COUNT OF
18 THIS COMPLAINT --

19 MR. COLE: JUST ONE MOMENT.

20 (WHEREUPON, A SHORT DISCUSSION
21 WAS HELD OFF THE RECORD BETWEEN
MR. COLE AND MR. JOHNSON.)

22 BY MR. FRANKLIN:

23 Q. NOW, MR. JOHNSON, AS TO THE SECOND COUNT IN THIS
24 COMPLAINT, YOU ARE CHARGED WITH ROBBERY WHICH WAS COMMITTED
25 ON THE 25TH OF SEPTEMBER, 1987 IN THAT YOU TOOK SOME SHOES
26 AND MONEY FROM MR. KENNETH WEISNER, W-E-I-S-N-E-R. DO YOU
27 RECALL THAT INCIDENT, MR. JOHNSON?

28 A. YES.

1 Q. WHO WAS WITH YOU ON THAT OCCASION?

2 A. I DON'T KNOW.

3 Q. ON THE 25TH OF SEPTEMBER, WHERE DID YOU FIRST
4 SEE MR. KENNETH WEISNER? WHERE WAS HE?

5 A. I DON'T KNOW WHO HE IS.

6 Q. IS IS THE GENTLEMAN THAT YOU TOOK THE SHOES
7 AND THE MONEY FROM IN SEPTEMBER OF 1987. DO YOU RECALL
8 THAT INCIDENT?

9 A. WHERE?

10 Q. THIS WAS ON 11TH AVENUE IN OAKLAND.

11 A. OH, YEAH.

12 Q. DO YOU RECALL IT NOW?

13 A. UH-HUH.

14 Q. WHO WAS WITH YOU ON THAT OCCASION?

15 A. STEVE MONGER.

16 Q. THIS WAS ABOUT 10:30 IN THE EVENING?

17 A. YEAH.

18 Q. AND --

19 A. I GUESS.

20 Q. AND WERE YOU AND MR. MONGER -- STRIKE THAT.

21 WERE YOU AND MR. MONGER -- STRIKE THAT.

22 WHEN DID YOU FIRST SEE MR. MONGER ON THE 25TH
23 OF SEPTEMBER. DO YOU RECALL?

24 A. NO. I DON'T.

25 Q. DID YOU AND MR. MONGER HAVE A PARTICULAR
26 PURPOSE FOR BEING TOGETHER ON THAT DATE?

27 A. I AM NOT SURE.

28 Q. WERE YOU LOOKING FOR -- DO YOU RECALL IF YOU

1 WERE LOOKING FOR DRUG DEALERS TO HOLD UP THAT DAY?

2 A. IF WE WAS, IF WE WAS THERE, PROBABLY SO.

3 Q. AND THIS OCCURRED ON 11TH AVENUE IN OAKLAND?

4 A. YES.

5 Q. IS IT YOUR TESTIMONY THAT YOU BOTH CAME FROM
6 SACRAMENTO TOGETHER PRIMARILY TO LOOK FOR DRUG DEALERS AND
7 TO HOLD THEM UP AND ROB THEM; IS THAT CORRECT?

8 A. YES.

9 Q. IS THAT CORRECT?

10 A. YES.

11 Q. SO, ON THE 25TH OF SEPTEMBER, YOU AND MR. MONGER
12 WERE TOGETHER WHEN YOU ROBBED MR. KENNETH WEISNER OF MONEY
13 AND SHOES; IS THAT CORRECT?

14 A. YES.

15 Q. NOW, DO YOU RECALL WHAT KIND OF SHOES THAT YOU
16 TOOK FROM MR. WEISNER THAT EVENING?

17 A. NO.

18 Q. DO YOU RECALL WHEN YOU FIRST SAW MR. WEISNER ON
19 THAT OCCASION?

20 A. STANDING AT THE BUS STOP.

21 Q. WHAT DID YOU DO WHEN YOU FIRST SAW HIM?

22 A. PULLED AROUND THE CORNER.

23 Q. WHO WAS DRIVING?

24 A. ME.

25 Q. DID MR. MONGER SAY ANYTHING?

26 A. I AM NOT SURE.

27 Q. AFTER YOU PULLED AROUND THE CORNER, DID YOU GET
28 OUT OF THE CAR, YOU AND MR. MONGER?

1 A. I DID NOT.

2 Q. DID MR. MONGER GET OUT OF THE CAR?

3 A. YES.

4 Q. DID HE TAKE ANYTHING WITH HIM?

5 A. YES.

6 Q. WHAT DID HE TAKE WITH HIM?

7 A. TOOK A SHOTGUN WITH HIM.

8 Q. WAS THE SHOTGUN LOADED?

9 A. I AM -- I DON'T KNOW.

10 Q. NOW, WHEN MR. MONGER GOT OUT OF THE CAR, DID HE
11 TELL YOU WHERE HE WAS GOING?

12 A. YEAH.

13 Q. WHERE DID HE TELL YOU HE WAS GOING?

14 A. AROUND THE CORNER.

15 Q. DID HE TELL YOU FOR WHAT PURPOSE?

16 A. NO. I KNEW WHAT PURPOSE.

17 Q. THAT WAS TO ROB MR. WEISNER; IS THAT CORRECT?

18 A. YES.

19 MR. COLE: EXCUSE ME FOR JUST A MOMENT. CAN WE
20 GO OFF THE RECORD?

21 THE COURT: ALL RIGHT.

22 (WHEREUPON, A SHORT DISCUSSION
23 WAS HELD OFF THE RECORD BETWEEN
24 MR. COLE AND MR. JOHNSON.)

25 MR. FRANKLIN: ON THE RECORD.

26 Q. MR. MONGER, ON THE 26TH OF SEPTEMBER, 1987 --
27 THE WITNESS: I AM MR. JOHNSON.

28 MR. FRANKLIN: STRIKE THAT.

Q. MR. JOHNSON, ON THE 26TH OF SEPTEMBER, WHICH WAS

1 THE NEXT DAY, WERE YOU WITH MR. MONGER WHEN HE CAME BACK TO
2 OAKLAND AND WENT TO 1142 FOOTHILL BOULEVARD?

3 A. YEAH. I WAS WITH HIM.

4 MR. COLE: EXCUSE ME.

5 (WHEREUPON, A SHORT DISCUSSION
6 WAS HELD OFF THE RECORD BETWEEN
7 MR. COLE AND MR. JOHNSON.)

8 BY MR. FRANKLIN:

9 Q. IS THAT THE OCCASION WHERE MR. MONGER ASSAULTED
10 A CONNIE BIRCH?

11 A. NO. I WASN'T -- NO. THAT WASN'T ME.

12 Q. YOU WEREN'T WITH HIM THAT DAY?

13 A. I WAS WITH HIM, BUT I DIDN'T GO WITH HIM.

14 Q. WHERE WERE YOU ON THAT OCCASION?

15 A. A BLOCK AWAY.

16 Q. DID YOU BOTH COME DOWN FROM SACRAMENTO TOGETHER
17 THAT DAY IN THE SAME CAR?

18 A. YES.

19 Q. AND HOW DID IT HAPPEN THAT YOU WERE A BLOCK
20 AWAY FROM MR. MONGER? WHAT CAUSED YOU TO BE SEPARATED?

21 A. HE WALKED.

22 Q. DID YOU PARK THE CAR SOMEPLACE?

23 A. YEAH, A BLOCK AWAY.

24 Q. DID HE TELL YOU WHAT HAPPENED AFTER HE CAME
25 BACK?

26 A. YEAH. HE TOLD ME HE KICKED IN SOMEBODY'S DOOR.
27 AS SIMPLE AS THAT.

28 Q. DID HE TELL YOU HE ASSAULTED A WOMAN?

A. NO.

1 Q. DID HE TELL YOU HE HIT A WOMAN?
2 A. NO. I DON'T THINK HE DID.
3 Q. DID YOU SAY HE TOLD YOU HE KICKED IN A DOOR; IS
4 THAT RIGHT?
5 A. YES.
6 Q. DID HE TELL YOU WHY HE WENT INTO THIS HOUSE?
7 A. NO.
8 Q. DID HE HAVE ANYTHING WITH HIM WHEN HE CAME BACK?
9 A. NO.
10 Q. NOW, ON THE 27TH OF SEPTEMBER YOU WERE WITH
11 MR. MONGER ON 90TH AVENUE AT 2124 - 90TH AVENUE. DO YOU
12 RECALL THAT?
13 A. YES.
14 Q. AND DO YOU RECALL YOU AND MR. MONGER -- STRIKE
15 THAT.
16 WHAT HAPPENED AFTER THAT DATE AND TIME?
17 A. WE WAS RIDING, AND WE SEEN A FEW GUYS.
18 Q. AND AFTER SEEING THESE GUYS, DID YOU DECIDE
19 TO ROB THEM, YOU AND MR. MONGER?
20 A. YES.
21 Q. HAD YOU COME DOWN FROM SACRAMENTO WITH THE
22 SPECIFIC PURPOSE OF ROBBING?
23 A. I AM NOT SURE.
24 Q. DO YOU RECALL TAKING A RING FROM A VICTIM THAT
25 EVENING?
26 A. NO.
27 Q. YOU DON'T RECALL IT?
28 A. I AM NOT SURE.

1 Q. BUT YOU DO RECALL COMMITTING A ROBBERY ON 90TH
2 AVENUE ON THAT DAY; IS THAT CORRECT?

3 A. YES.

4 Q. AND THAT WAS ABOUT MIDNIGHT OR 12:15 A.M.?

5 A. I DON'T KNOW.

6 Q. IT WAS LATE; IS THAT CORRECT?

7 A. YEAH.

8 Q. NOW, ON THAT OCCASION DID YOU HAVE A SHOTGUN
9 WITH YOU?

10 A. NO. NOT ME.

11 Q. DID MR. MONGER HAVE A SHOTGUN WITH HIM?

12 A. YES.

13 Q. DID YOU HAVE A WEAPON?

14 A. YEAH.

15 Q. WHAT DID YOU HAVE?

16 A. A BILLYCLUB.

17 Q. DO YOU RECALL WHAT YOU SAID TO MR. MONTGOMERY
18 WHEN MR. MONGER ROBBED HIM?

19 A. NO.

20 Q. DID YOU PUT HIM ON THE GROUND?

21 A. YES.

22 Q. WHO TOLD HIM TO GET ON THE GROUND?

23 A. I AM NOT SURE.

24 Q. DID MR. MONGER POINT THE SHOTGUN AT HIM?

25 A. YES.

26 Q. WAS THE SHOTGUN LOADED ON THAT OCCASION,
27 MR. JOHNSON?

28 A. I AM NOT SURE.

1 Q. NOW, IF WE COULD BACK UP FOR JUST A MOMENT. ON
2 OCTOBER 21ST WHEN YOU WERE AT THE ZOO AND YOU WENT BACK TO
3 THE CAR AND GOT THE SHOTGUN, YOU KNEW IT WAS LOADED; DIDN'T
4 YOU?

5 A. I DON'T KNOW.

6 Q. YOU HAD FIRED THAT SHOTGUN BEFORE, HADN'T YOU,
7 MR. JOHNSON?

8 A. YEP.

9 Q. DID MR. MONGER TELL YOU THAT THE GUN WAS LOADED?

10 A. NO.

11 Q. NOW, DO YOU REMEMBER MAKING THIS STATEMENT
12 AGAIN TO AN ATTORNEY FROM OUR OFFICE, A WOMAN?

13 A. YEAH. I REMEMBER TALKING TO HER.

14 Q. DO YOU REMEMBER TELLING HER THAT YOU KNEW THE
15 GUN WAS LOADED?

16 A. NO. I DON'T REMEMBER THAT.

17 Q. YOUR COUNSEL HAS SHOWN YOU A COPY I BELIEVE OF
18 THE TAPED STATEMENT THAT YOU GAVE TO THE ATTORNEY FROM MY
19 OFFICE. DOES THAT HELP REFRESH YOUR RECOLLECTION,
20 MR. JOHNSON?

21 A. NO.

22 Q. OKAY. YOU HAVE SEEN THAT, AND YOU STILL DON'T
23 REMEMBER TELLING THE ATTORNEY FROM MY OFFICE THAT?

24 A. I AM NOT SURE.

25 Q. IT DOES INDICATE, I BELIEVE, AS YOUR COUNSEL
26 HAS SHOWN YOU, THAT YOU TOLD THE OTHER DEPUTY THAT YOU
27 KNEW THE GUN WAS LOADED, CORRECT?

28 A. IF THAT IS WHAT IT SAY.

1 Q. NOW, ON THE 27TH, AGAIN ON THE 27TH OF
2 SEPTEMBER AT THE SAME PLACE AT 2124 - 90TH AVENUE, HOW
3 MANY PEOPLE DID YOU AND MR. MONGER ROB AT THAT LOCATION
4 AND TIME?

5 A. ABOUT THREE.

6 Q. DO YOU RECALL TAKING SOME KEYS AS WELL AS
7 MONEY OFF OF ONE OF THE VICTIMS?

8 A. YES.

9 Q. AND AGAIN, WAS THIS THE SAME OCCASION THAT
10 MR. MONGER HAD THIS RIFLE AND YOU HAD THE BILLYCLUB?

11 A. YEP -- YES.

12 Q. WAS THERE EVER AN OCCASION WHEN YOU AND MR. MONGER
13 CAME DOWN TO ROB DRUG DEALERS PRIOR TO THE OCTOBER 21ST
14 SHOOTING AT THE ZOO WHERE ONE OF YOUR VICTIMS WAS ACTUALLY
15 SHOT?

16 A. EXCUSE ME? REPEAT THAT.

17 Q. WAS THERE AN OCCASION PRIOR TO OCTOBER 21ST,
18 1987, AT THE ZOO WHERE YOU AND MR. MONGER CAME DOWN TO
19 OAKLAND FROM SACRAMENTO TO ROB DRUG DEALERS WHERE ONE OF
20 YOUR VICTIMS WAS SHOT WITH A SHOTGUN?

21 A. YEAH.

22 Q. DO YOU RECALL WHAT DATE THAT WAS?

23 A. THE 23RD.

24 Q. WHO HAD THE SHOTGUN ON THAT OCCASION?

25 A. ME.

26 Q. YOU HAD THE SHOTGUN?

27 A. (WITNESS NODS HEAD.) OH, YEAH.

28 Q. DO YOU RECALL WHERE YOU SHOT THE VICTIM?

1 A. IN THE STOMACH.

2 Q. NOT ON OCTOBER 21ST. PRIOR TO THAT DAY?

3 A. WHAT DO YOU MEAN?

4 Q. MY QUESTION WAS: PRIOR TO THE INCIDENT AT THE
5 ZOO, WAS THERE EVER ANOTHER OCCASION?

6 A. NO. NO. NO.

7 Q. NOW, ON SEPTEMBER 27TH AND AGAIN AT THE SAME
8 PLACE, DO YOU RECALL TAKING SOME SHOES AND A WATCH OFF OF
9 ONE OF YOUR VICTIMS ON SEPTEMBER 27TH, 1987?

10 A. YES.

11 Q. WHO TOOK THE SHOES AND THE WATCH?

12 A. I AM NOT SURE.

13 Q. ON THE 27TH OF SEPTEMBER AGAIN 1987, DO YOU
14 RECALL BEING INVOLVED WITH TAKING A CAR?

15 A. YEP.

16 Q. A 1987 HONDA CIVIC?

17 A. YES.

18 Q. WHO TOOK THE CAR?

19 A. ME.

20 Q. WHO WAS WITH YOU ON THAT OCCASION?

21 A. MONGER.

22 Q. DID YOU AND MR. MONGER DISCUSS TAKING THAT
23 CAR?

24 A. NO.

25 Q. WHERE WAS THE CAR WHEN YOU FIRST SAW IT,

26 MR. JOHNSON?

27 A. PARKED IN THE CAR PORT.

28 Q. WAS IT LOCKED?

1 A. THE CAR?

2 Q. YES.

3 A. YES.

4 Q. HOW DID YOU GET INTO THE CAR?

5 A. WITH A KEY, WITH THE KEY.

6 Q. YOU HAD THE KEY TO THE CAR?

7 A. YEAH.

8 Q. HOW DID YOU GET THE KEY?

9 A. FROM SOMEBODY.

10 Q. FROM WHOM?

11 A. I DON'T KNOW HIS NAME.

12 Q. DID YOU TAKE THE KEY?

13 A. YEAH.

14 Q. HOW DID YOU TAKE THE KEY? EXPLAIN TO ME HOW

15 YOU GOT THE KEY, MR. JOHNSON?

16 A. I DON'T KNOW. I AM NOT SURE.

17 Q. SOMEONE POINT A GUN AT SOMEONE TO TAKE A KEY?

18 A. THEY THREW IT TO THE GROUND.

19 Q. AND THIS PERSON HAD THE KEY TO THE CAR?

20 A. YES.

21 Q. AND YOU AND MR. MONGER WERE TOGETHER ON THAT

22 OCCASION?

23 A. YES.

24 Q. AFTER YOU GOT THE KEY, WHO DROVE THE CAR?

25 A. ME.

26 Q. WHERE WAS MR. MONGER?

27 A. THE PASSENGER SEAT.

28 Q. WERE YOU BOTH ARMED ON THAT OCCASION?

1 A. NO. OH, I HAD A BILLYCLUB.

2 Q. AND MR. MONGER?

3 A. HAD A SHOTGUN.

4 Q. NOW, ON OCTOBER 16TH OF 1987 DO YOU RECALL
5 COMMITTING A ROBBERY ON EAST 22ND STREET, 1024 EAST 22ND
6 STREET?

7 A. I DON'T KNOW. REPEAT THAT.

8 Q. THIS WAS ON 22ND STREET ON OCTOBER -- STRIKE
9 THAT. OCTOBER 16TH OF 1987, DO YOU REMEMBER THAT?

10 A. I AM NOT SURE. EAST 20TH-WHAT?

11 Q. EAST 22ND STREET?

12 A. YES.

13 Q. DO YOU RECALL WHAT TIME THAT WAS, MR. JOHNSON?

14 A. NO. I DON'T.

15 Q. WHO WAS WITH YOU ON THAT OCCASION?

16 A. STEVE.

17 Q. AND HAD YOU AND MR. MONGER AGAIN COME DOWN
18 THAT DAY SPECIFICALLY TO ROB DRUG DEALERS, DOWN TO OAKLAND?

19 A. YES.

20 Q. DO YOU RECALL HOW MANY PEOPLE YOU ROBBED AT
21 THAT LOCATION AND AT THAT TIME?

22 A. NO.

23 Q. WERE YOU ARMED ON THAT OCCASION?

24 A. YES. WITH A BILLYCLUB.

25 Q. YOU HAD A BILLYCLUB?

26 A. YES.

27 Q. WAS MR. MONGER ARMED?

28 A. YES.

1 Q. WHAT DID HE HAVE?

2 A. A SHOTGUN.

3 Q. NOW, THROUGHOUT THESE ROBBERIES DID YOU AND
4 MR. MONGER USE THE SAME SHOTGUN?

5 A. YES.

6 Q. AND THIS WAS THE SHOTGUN THAT WAS USED TO SHOOT
7 MR. BRADFORD?

8 A. YES.

9 Q. WHEN YOU AND MR. MONGER CONDUCTED THESE
10 ROBBERIES, DID YOU MAKE ANY KIND OF ANNOUNCEMENT THAT
11 YOU WERE POLICE OR THE TASK FORCE OR ANYTHING LIKE THAT?

12 A. HE DID A COUPLE OF TIMES.

13 Q. AND EXACTLY WHAT DID HE SAY?

14 A. I AM NOT SURE.

15 Q. DO YOU RECALL ANYTHING THAT HE SAID?

16 A. NO.

17 Q. BUT YOU DO RECALL HIM SAYING "POLICE OR TASK
18 FORCE"; IS THAT CORRECT?

19 A. HE YELLED.

20 Q. HE YELLED "TASK FORCE"?

21 A. I DON'T KNOW WHAT HE YELLED. HE YELLED. THAT
22 IS ALL.

23 Q. NOW, ON THE 26TH OF OCTOBER OF 1987 DO YOU
24 RECALL BEING INVOLVED WITH ANOTHER ROBBERY AND AGAIN TAKING
25 SOME SHOES?

26 A. YEAH. I GUESS.

27 Q. ON 51ST STREET?

28 A. 51ST STREET?

1 Q. ON THAT OCCASION?

2 A. I DON'T REMEMBER THAT.

3 Q. WAS THERE AN OCCASION WHERE MR. PERRY WAS ALSO
4 WITH YOU AND MR. MONGER?

5 A. I AM NOT SURE.

6 Q. DO YOU RECALL AT ALL EVER COMING FROM
7 SACRAMENTO WITH MR. PERRY?

8 A. YES. TO VISIT MY MOTHER A COUPLE OF TIMES.

9 Q. ON ONE OF THOSE OCCASIONS DO YOU RECALL IF
10 HE WAS INVOLVED WITH ONE OF THE ROBBERIES WITH YOU AND
11 MR. MONGER ON OCTOBER 26TH OF 1987?

12 A. YES. YES.

13 Q. WAS THAT THE OCCASION WHEN YOU TOOK SOME SHOES
14 AND SOME MONEY FROM A MR. CALDWELL ON 51ST STREET IN
15 OAKLAND AT ABOUT -- AGAIN ABOUT 12:45 A.M. IN THE MORNING?

16 A. WHAT TIME?

17 Q. ABOUT 12:45 A.M. ON OCTOBER 26TH OF 1987?

18 A. THIS WAS -- ?

19 Q. THIS WAS AFTER THE OCCURRENCE AT THE ZOO?

20 A. IN OAKLAND?

21 Q. YES.

22 A. YEAH.

23 Q. AND MR. PERRY WAS WITH YOU ON THAT OCCASION?

24 A. YES.

25 Q. WERE YOU ARMED ON THAT OCCASION?

26 A. I AM NOT SURE.

27 Q. WAS ANYONE ARMED ON THAT OCCASION?

28 A. I AM NOT SURE.

1 I DON'T REMEMBER 51ST STREET.

2 MR. FRANKLIN: I HAVE NO FURTHER QUESTIONS.

3 THE COURT: ALL RIGHT.

4 MR. COLE: JUST A MOMENT.

5 THE COURT: PARDON, MR. COLE?

6 MR. COLE: JUST A MOMENT.

7 (WHEREUPON, A SHORT DISCUSSION
8 WAS HELD OFF THE RECORD BETWEEN
9 MR. COLE AND MR. JOHNSON.)

10 THE COURT: ALL RIGHT. MR. COLE, IS THERE
11 ANYTHING BEFORE I TAKE THE DEFENDANT'S PLEA?

12 MR. COLE: NO. I DON'T BELIEVE SO.

13 THE COURT: ALL RIGHT. THEN, MR. JOHNSON, TO
14 THE CHARGE OF COUNT ONE OF THIS COMPLAINT, CHARGING YOU
15 WITH A FELONY CRIME OF 187 OF THE PENAL CODE ON OCTOBER
16 THE 21ST, 1987, HOW DO YOU PLEAD, SIR?

17 THE WITNESS: I PLEAD GUILTY.

18 THE COURT: THE RECORD WILL SHOW THAT GUILTY
19 PLEA.

20 IT'S FURTHER ALLEGED IN CONNECTION WITH THE
21 COMMISSION OF THE OFFENSE OF 187 OF THE PENAL CODE THAT
22 YOU PERSONALLY USED A FIREARM TO WIT: A SHOTGUN.

23 DO YOU ADMIT THAT YOU PERSONALLY USED A
24 FIREARM TO WIT: A SHOTGUN IN CONNECTION WITH THE COMMISSION
25 OF THAT OFFENSE?

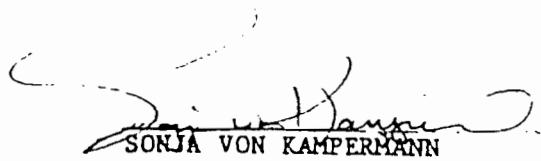
26 THE WITNESS: YES.

27 THE COURT: WITH RESPECT TO COUNT TWO OF THE
28 COMPLAINT THAT CHARGES THAT ON SEPTEMBER THE 25TH, 1987 THAT
YOU COMMITTED A FELONY VIOLATION OF SECTION 211 OF THE PENAL

1 State of California)
2) ss.
3 County of Alameda)

4 I, SONJA VON KAMPERMANN, Official pro tem reporter,
5 do hereby certify that I am a pro tem reporter of the Municipal
6 Court of the State of California and that as such I reported the
7 proceedings held in the above-entitled matter at the time and
8 place set forth herein.

9 That my stenograph notes were thereafter transcribed under my
10 direction; and that the foregoing pages constitute a full, true
11 and correct transcription of my said notes and were reduced to
12 writing to the best of my ability.

13
14
15
16
17
18 
19 SONJA VON KAMPERMANN

20 OFFICIAL REPORTER
U. S. DISTRICT COURT
SAN FRANCISCO, CALIF. 94103
21
22
23
24
25
26
27
28

0423

ACTION EXPRESS LEGAL SERVICE
Historic 1812 Martin Street Bldg., Alameda, CA 94501

EXHIBIT B

INMATE STATUS SUMMARY TYPE: P DUE: 08/10/2000 19:07
 CDC NUMBER: 1 NAME: JOHNSON, LEANDRE DEMURG
 ETHNIC: BLA BIRTHDATE: 01/07/1969
 TERM STARTS: 07/05/1988 LIFE TERM STARTS: 01/05/1989 MIN ELIGIBLE PAROLE DTE: 09/05/2005
 PAROLE PERIOD: CASE TERM 25/00 + ENHCMTS 3/00 = TOT TERM 27/00 TO LIFE /LIFE

PRE-PRISON + POST SENTENCE CREDITS

CASE P2900-5 P1203-3 P2900-1 CRC-CRED MH-CRED P4019 P2931 POST-SENT TOT
 91813 224 112 28 364

NOTIFICATION REQUIRED PER PC296
 NOTIFICATION REQUIRED PER PC3058.6

INMATE COPY

DOC. HEARING: 10/2001 DEFENSE ATTORNEY: WILLIAM COLE
 INIT. HEARING: 08/2004 INVESTIGATING AGENCY: OAKLAND P.D.

RECV BY COUNTY/	CASE	SENTENCE DATE	CREDIT	OFFENSE
CDN	OFF-CODE	DESCRIPTION	CODE	DATE

CONTROLLING PRINCIPAL & CONSECUTIVE (INCLUDES ENHANCEMENTS/OFFENSES):

-CONTROLLING CASE--
 7/05/1988 ALA 91813 6/06/1986
 01 P107 MURDER 1ST 32 10/31/1987
 (0)WPR
 12033.5 USE 1

NON-CONTROLLING OFFENSES:

7/05/1988 ALA 91813 6/06/1986	1	09/25/1987
02 P212.5(B) ROBBERY 2ND	1	09/27/1987
05 P212.5(B) ROBBERY 2ND	1	

ATTW WAIVER	BEGINNING	CREDIT	TOTAL	TOTAL	NET
DATE	BALANCE	APPLIED	LOST	RESTORED	TOTAL
07/05/1988	4332	4332	0	0	4332

CREDITS AUTO REVESTED PER PC-2934 : 14

TRAN	TYPE	DATE	END DATE	LOG NUMBER	RULE	B A Y S
					NUMBER	ASSESS LOST REST DEAD

REG 07/05/1988 REG BAL A B C D E F G H I J K L

* * * * * CONTINUED * * * * *

DEBTOR STATUS SUMMARY - CONTINUATION - PAGE 2

SSC NUMBER	NAME
006755	JOHNSON, LEANDRE, JUNIOR

CURRENT BC BALANCE: 761

CURRENT BC BALANCE: 2262

parole pursuant to paragraph (3) and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole or from the date of extension of parole pursuant to paragraph (3).

(6) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

Added Stats 1976 ch 1139 § 278, operative July 1, 1977. Amended Stats 1977 ch 2 § 5, effective December 16, 1976, operative July 1, 1977, ch 165 § 42, effective June 29, 1977, operative July 1, 1977; Stats 1978 ch 582 § 1; Stats 1979 ch 255 § 17; Stats 1981 ch 1111 § 3; Stats 1982 ch 1406 § 2. Amended Stats 1992 ch 695 § 12 (SB 97), effective September 14, 1992; Stats 1993 ch 585 § 14 (AB 10), effective September 28, 1993; Stats 1st Ex Sess 1993-94 ch 53 § 1 (SB 32 X), effective November 30, 1994; Stats 1995 ch 313 § 13 (AB 817), effective August 3, 1995; Stats 1996 ch 462 § 3 (AB 3130), effective September 13, 1996; Stats 2000 ch 142 § 3 (AB 1300), effective July 19, 2000; Stats 2001 ch 485 § 3 (AB 1004), ch 854 § 49.5 (SB 205); Stats 2002 ch 829 § 1 (AB 2539).

§ 3000.05. Collection of debt from parolees failing to make restitution payments

(a) The Department of Corrections may contract with a private debt collection agency or with the Franchise Tax Board, whichever is more cost-effective, to make collections, on behalf of a victim, from parolees who

have failed to make restitution payments according to the terms and conditions specified by the department.

(b) If a debt is referred to a private collection agency or to the Franchise Tax Board pursuant to this section, the parolee shall be given notice of that fact, either by the department in writing to his or her address record, or by his or her parole officer.

Added Stats 1996 ch 705 § 1 (SB 580).

§ 3000.1. Life parole for first or second degree murder offense; Discharge; Revocation

(a) In the case of any inmate sentenced under Section 1168 for any offense of first or second degree murder with a maximum term of life imprisonment, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

(b) Notwithstanding any other provision of law, whether any person referred to in subdivision (a) has been released on parole from the state prison, and has been on parole continuously for seven years in the case of any person imprisoned for first degree murder, and for ten years in the case of any person imprisoned for second degree murder, since release from confinement, the board shall, within 30 days, discharge that person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and transmit a copy of it to the parolee.

(c) In the event of a retention on parole, the parolee shall be entitled to a review by the board each year thereafter.

(d) There shall be a hearing as provided in Sections 3041.5 and 3041.7 within 12 months of the date of a revocation of parole to consider the release of the inmate on parole, and notwithstanding the provisions of paragraph (2) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The panel or board shall release the person within one year of the date of the revocation unless it determines that the circumstance and gravity of the parole violation are such that consideration of the public safety requires a more lengthened period of incarceration or unless there is a new prison commitment following a conviction.

(e) The provisions of Section 3042 shall not apply to any hearing held pursuant to this section.

Added Stats 1982 ch 1406 § 3. Amended Stats 2000 ch 142 § 4 (AB 1300), effective July 19, 2000; Stats 2001 ch 854 § 50 (SB 205).

§ 3001. Discharge from parole

(a) Notwithstanding any other provision of law, whether any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole unless the Department of Corrections recommends t

EXHIBIT "A"

PAROLE AND REVOCATION PERIODS
(EFFECTIVE 5/1/80)

<u>Date of Commitment Offense and date of Parole if Relevant</u>	<u>Type of Offense</u>	<u>Discharge Review</u>	<u>Period of Parole</u>	<u>Maximum Period of Parole</u>	<u>Revocation Period</u>
Commitment offense on or before 12/31/78	Life	None	3 years	4 years	6 months
Commitment offense on or before 12/31/78	Nonlife	None	1 year	18 months	6 months
Commitment offense on or after 1/1/79	Life	During 37th month of continuous parole	5 years	7 years	12 months
Commitment offense on or after 1/1/79	Nonlife	During 13th month of continuous parole	3 years	4 years	12 months

CR/22 (3-16-81)

PAROLE AND REVOCATION PERIODS

DATE OF COMMITMENT	TYPE OF OFFENSE	DISCHARGE REVIEW	PERIOD OF PAROLE	MAXIMUM REVOCATION PERIOD	MAXIMUM PERIOD OF PAROLE JURISDICTION
on or before 12/31/78	Non-Life Violent + Non-Violent Felonies	None	1 year	6 months	18 months
on or after 01/01/79	Non-Life Violent + Non-Violent Felonies	13 months of continuous parole	3 years	1 year	4 years
on or after 09/26/88	Non-Life Non-Violent Felonies	13 months of continuous parole	3 years	1 year	4 years
on or after 09/26/88	Non-Life Violent Felony (667.5(c))	within 30 days of com- pletion of 2 years contin- uous parole	3 years	1 year	4 years
on or before 12/31/78	Life	None	3 years	6 months	4 years
on or after 01/01/79	Life	37th month of contin- uous parole	5 years	1 year	7 years
on or after 01/01/83	Murder 1st	within 30 days of com- pletion of 7 years contin- uous parole	Life	1 Year	Life
	Murder 2nd	within 30 days of com- pletion of 5 years contin- uous parole	Life	1 year	Life
on or after 09/26/88	Life Violent Felony (667.5(c))	within 30 days of com- pletion of 3 years contin- uous parole	5 years	1 year	7 years



California
Department of
Corrections
**OPERATIONS
MANUAL**

Chapter: 80000
Parole Operations
Subchapter: 81000
Field Agent Guide
Section: 81080
Discharge and Pardon

PAROLE AND REVOCATION PERIODS

<u>Date of Commitment</u>	<u>Type of Offense</u>	<u>Discharge Review</u>	<u>Maximum Period of Parole</u>	<u>Maximum Revocation Period*</u>	<u>Max. Period of Parole Jurisdiction</u>
Commitment offense on or before 12/31/78	Life	None	3 years	6 months	4 years
Commitment offense on or before 12/31/78	Non-Life	None	1 year	6 months	18 months
Commitment offense on or after 1/1/79 but prior to 12/31/82	Life	During 37th mo. of cont. parole	5 years	1 year	7 years
Commitment offense on or after 1/1/79	Non-Life	During 13th mo. of cont. parole	3 years	1 year	4 years
Commitment offense on or after 1/1/83	Life (Murder 1st Degree)	Within 30 days of completion of 7 years cont. parole	Life	1 year	Life
Commitment offense on or after 1/1/83	Life (Murder 2nd Degree)	Within 30 days of completion of 5 years cont. parole	Life	1 years	Life
Commitment offense on or after 9/26/88	Violent Felony (PC 667.5)	Within 30 days of completion of 2 years of cont. parole	3 years or 5 yrs	1 year	4 years or Life based on commitment offense

*Multiple revocation terms may be imposed.

Section 1700 - Discharge Policy.

1. A parolee may be recommended for discharge at any time when case factors or other considerations support early discharge.
2. Discharge review periods are specified in the Penal Code. Discharge review periods and maximum parole jurisdiction, depending on date and type of commitment offense, are:

PAROLE AND REVOCATION PERIODS

DATE OF COMMITMENT OFFENSE	TYPE OF OFFENSE	DISCHARGE REVIEW	MAXIMUM PERIOD OF PAROLE	MAXIMUM REVOCATION PERIOD*	MAXIMUM PERIOD OF PAROLE JURISDICTION
Commitment offense on or before 12/31/78	Life	None	3 years	6 months	4 years
Commitment offense on or before 12/31/78	Non-Life	None	1 year	6 months	18 months
Commitment offense on or after 1/1/79 but prior to 12/31/82	Life	During 37th month of continuous parole	5 years	1 year	7 years
Commitment offense on or after 1/1/79	Non-Life	During 13th month of continuous parole	3 years	1 year	4 years
Commitment offense (Murder 1st Degree) on or after 1/1/83	Life	Within 30 days of completion of 7 years of continuous parole	Life	1 year	Life
Commitment offense (Murder 2nd Degree) on or after 1/1/83	Life	Within 30 days of completion of 5 years of continuous parole	Life	1 year	Life
Commitment offense Violent on or after 9/26/88 (PC 667.5) Felony	Within 30 days of completion of 2 years of continuous parole	3 years or 5 years (Life)	1 year	4 years or Life based on commit- ment offense	

* Multiple revocation terms may be imposed.

3. Continuous parole means the BPT has not interrupted the parole period by suspending or revoking a parolee who has been found guilty of an offense. Suspended PAL time does not count toward maximum time limits unless BPT makes a good cause finding to exclude at-large time from the parole period.

ge: 1 Document Name: untitled

PTBM20
PPTBP20OFFENDER BASED INFORMATION SYSTEM
PAROLE PERIOD TABLE QUERY01/31/2006
03:59 PM

DATE OF OFFENSE	TYPE OF OFFENSE	PAROLE PERIOD
ON OR BEFORE 12/31/1978	NON-LIFE	1 YEAR
	LIFE	3 YEARS
ON OR AFTER 01/01/1979	NON-LIFE (***NOT INCLUDING SPECIFIC SEX OFFENSES AFTER 07/19/2000 ***)	3 YEARS
01/01/1979-12/31/1982	LIFE	5 YEARS
ON OR AFTER 01/01/1983	LIFE (OTHER THAN MURDER 1ST AND 2ND)	5 YEARS
	LIFE (MURDER 1ST and 2ND ONLY)	LIFE
ON OR AFTER 7/19/2000	SEX OFFENSES PER PC 3000(B) (1)	5 YEARS
***TO QUERY SPECIFIC SEX AND MURDER OFFENSES PRESS PF5		
Inter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12--- BACK	QUERY	MENU QUIT

ate: 1/31/2006 Time: 3:57:40 PM

EXHIBIT C

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 9

Date: April 26, 2006

Hon. LARRY J. GOODMAN, Judge

Terri Turner, Deputy Clerk.
Not Reported, Reporter

IN RE

LEANDRE DEMUND JOHNSON
Petitioner

Counsel appearing
for Petitioner

vs.
PEOPLE OF THE STATE OF CALIFORNIA
Respondent

Counsel appearing
for Respondent

Nature of Proceedings: **ORDER OF THE COURT**
REGARDING PETITION FOR WRIT OF HABEAS CORPUS

Case No. 91813A
PFN: ARP654
CEN: 7098081

Petition for writ of habeas corpus is denied. The Petition fails to state a prima facie case for relief. Since Petitioner was not promised a specific parole date at the time of his plea there has been no violation of the plea agreement. Further since Petitioner has not been released on parole, the length of his parole at this time is not an issue to be addressed by habeas relief. Finally, with the charges that were facing Petitioner at the time of his plea, Petitioner has failed to demonstrate that he has been prejudiced or that he would not have plead if told he would be on parole for longer than five years.

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served **ORDER OF THE COURT** by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

LeAndre Johnson CDC#88755
P.O. BOX 4000
Vacaville, CA. 95696-4000

Dated: May 3, 2006

By: Terri Turner
Terri Turner, Deputy Clerk

Writ- Johnson, Leandre

EXHIBIT E

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

FILED

DIVISION FOUR

SEP 28 2006

In re LEANDRE JOHNSON,
on Habeas Corpus.

A115252

(Alameda County
Super. Ct. No. 91813A)

Court of Appeal - First App. Dist.
DIANA HERBERT
By _____ DEPUTY

BY THE COURT:

The petition for writ of habeas corpus is denied. Although it appears petitioner was misadvised as to the length of his parole period, petitioner has not demonstrated prejudice. (See *People v. Avila* (1994) 24 Cal.App.4th 1455, 1459-1460; see also *In re Moser* (1993) 6 Cal.4th 342, 352.) In addition, petitioner's claim that he was promised a release date is not supported by the transcript of the guilty plea he has provided this court.

(Ruvolo, P.J., Reardon, J., and Sepulveda, J., joined in the decision.)

SEP 28 2006

Date: _____

RUVOLO, P.J. P.J.

EXHIBIT F

S149398

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re LE'ANDRE JOHNSON on Habeas Corpus

The petition for writ of habeas corpus is denied. (See *In re Miller* (1941) 17 Cal.2d 734; *In re Robbins* (1998) 18 Cal.4th 770, 780; *In re Clark* (1993) 5 Cal.4th 750.)

**SUPREME COURT
FILED**

JUN 20 2007

Frederick K. Ohlrich Clerk

DEPUTY

GEORGE

Chief Justice

EXHIBIT G

INITIAL PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:) CDC Number D-88755
LEANDRE JOHNSON)
-----)

**INMATE
COPY**

CALIFORNIA STATE PRISON, SOLANO

VACAVILLE, CALIFORNIA

SEPTEMBER 23, 2005

9:48 AM

PANEL PRESENT:

Mr. Terry Farmer, Presiding Commissioner
Mr. Chuck Wolk, Deputy Commissioner

OTHERS PRESENT:

Mr. Leandre Johnson, Inmate
Mr. Bennett Davey, Attorney for Inmate
Correctional Officer, Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

----- No See Review of Hearing
----- Yes Transcript Memorandum

Judy K. Farncomb

Peters Shorthand Reporting

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--oOo--

1 P R O C E E D I N G S

2 DEPUTY COMMISSIONER WOLK: We're on
3 record.

4 PRESIDING COMMISSIONER FARMER: Okay,
5 thank you.

6 PRESIDING COMMISSIONER FARMER: The time
7 is now 9:48 A.M. We are on record in the
8 Parolee Parole Consideration Hearing for
9 Leandre, did I pronounce that correctly?

10 INMATE JOHNSON: Leandre.

1 same complaint in violation of Penal Code
2 Sections 212.5b (indiscernible) in the second
3 degree as expressed in Count 5 of that same
4 complaint, also in violation of Penal Code
5 Section 1255 - 121.5b. Mr. Johnson, what we are
6 next going to do is identify everybody, you can
7 see microphones in front of us, all of this is
8 being recorded and will be subsequently
9 transcribed. So in order to identify the
10 persons presence in the room, we will start by
11 (throat clearing) each of us stating our full-
12 names, spelling our last names, and when we get
13 to you, if you could also include your CDC
14 number. My name is Terry Farmer, F-A-R-M-E-R.
15 I'm the Commissioner.

16 **DEPUTY COMMISSIONER WOLK:** I'm Chuck
17 Wolk, W-O-L-K, Deputy Commissioner.

18 **PRESIDING COMMISSIONER FARMER:** All
19 right.

20 **INMATE JOHNSON:** I'm Leandre Johnson,
21 D-88755.

22 **DEPUTY COMMISSIONER WOLK:** Spelling of
23 your last name, sir.

24 **INMATE JOHNSON:** J-O-H-N-S-O-N.

25 **ATTORNEY DAVEY:** Bennett Davey, D-A-V-E-
26 Y. Thank you.

27 **PRESIDING COMMISSIONER FARMER:** The next

1 thing that I wanted to cover, Mr. Johnson, is
2 the possible disability and affect of this
3 proceeding. In looking at BP Form 1073, which
4 was supposedly signed in April 18th of this
5 year, staff review indicated that there was no
6 disabilities identified and then you indicated
7 that you do not need any assistance for your
8 Parole Hearings. I will next ask you attorney
9 whether not he has reviewed that form and
10 discussed any potential disability issues with
11 you and whether or not he believes that there
12 are any that need to be addressed.

13 **ATTORNEY DAVEY:** Yes, sir. I have
14 discussed the 1073 Form with Mr. Johnson and
15 there are no disabilities that need
16 accommodations. We are ready to proceed.

17 **PRESIDING COMMISSIONER FARMER:** Okay. Do
18 you agree with that, Mr. Johnson.

19 **INMATE JOHNSON:** Yes.

20 **PRESIDING COMMISSIONER FARMER:** Now, let
21 me go through the procedure that we are going to
22 be following. This is your Initial Hearing, so
23 listen to the procedure as I outline it for you.
24 If you have any questions, when I ask for them,
25 feel free to ask them. I want to make sure that
26 you will understand what is about and how we are
27 going to proceed. Okay. The Hearing is being

1 conducted pursuant to Penal Code Sections 3041
2 and 3042, and the Rules and Regulations of the
3 Board of Parole Hearings, which govern the
4 Parole Consideration for life inmates. The
5 purpose of today's Hearing, is to consider your
6 suitability for parole. In doing so we will
7 consider the number and nature of the crimes for
8 which you were committed, any prior criminal
9 history you have, your social history, and your
10 behavior and programming since your commitment.
11 We have available and we have had the
12 opportunity to review your Central File. You
13 are given the opportunity to correct any errors
14 that you believe exist in that record. We will
15 consider your progress since your commitment.
16 We will look at your counselor's report; we'll
17 look at your psychological report and we will
18 talk about your parole. If there is any change
19 in the parole plans since the time of the
20 counselor's report, which talks about that, you
21 should bring it them to our attention. We will
22 reach a decision today and we will inform you
23 whether or not we find you suitable of parole
24 and the reason for our decision. If you are
25 found suitable for parole, the length of your
26 confinement will be explained to you. Before we
27 go any further, as this is your Initial Hearing,

1 to the extent, to the extent that you agree to
2 speak with us about the matters at issue here,
3 and we'll talk about that in a minute, I want to
4 advise you how important that it is for you to
5 be honest and candid. There are time when there
6 are people that who come in here and less than
7 candid, less than forthright. Everything that
8 is indicated has been recorded, and if you are
9 not granted a date, future Hearing Panels will
10 have it. And if you are less than candid and
11 forthright that will (indiscernible) to your
12 advantage. So to the extent that you agree to
13 speak with us it is very important that you be
14 honest and forthright. Do you understand what
15 I'm saying to you?

16 **INMATE JOHNSON:** Yes.

17 **PRESIDING COMMISSIONER FARMER:** Okay.

18 Now, we are not here to retry your case.
19 Nothing that happens here is going to change the
20 findings of the Court. If you want to quarrel
21 with anything that happened in Court you have to
22 go back to Court. We're just here to determine
23 whether or not you suitable based upon your
24 conviction. We assume the conviction is valid;
25 we have no information to disagree with that.
26 If you have any quarrels with the Judge that
27 sentenced you or the D.A. that prosecuted you or

1 the lawyer that represented you with the plea
2 process, if you have any of those quarrels, this
3 is not the place for it. We are just here
4 assuming that what you did is accurate and to
5 determine, based upon that, and the other
6 factors that I've talked about that you are
7 suitable for parole. Do you understand?

8 **INMATE JOHNSON:** Yes.

9 **PRESIDING COMMISSIONER FARMER:** Okay.

10 Now, we're going to conduct a Hearing in two
11 phases. I will discuss with you your commitment
12 offense, any prior criminal record that you
13 have, your social history, your parole plans,
14 and any letters that we've received, either in
15 support of you or in opposition to you. Then
16 Deputy Commissioner Wolk will discuss with you
17 what you have done in the institution, any
18 disciplinaries that you have received, if any,
19 your programming, your work assignments, your
20 counselor's report, and your psychological
21 report, all the history that you have within the
22 institution. After that if we have questions
23 about any of those areas, we will have the
24 opportunity to ask those. Your attorney will,
25 likewise, have the opportunity to ask you
26 questions if he believes these are important
27 points that he wants to bring out. After we go

1 through that process, then your attorney will
2 have the opportunity to give us a closing
3 argument, closing statement, as to why he
4 believes you are suitable, and then it's your
5 turn, if you chose to do so, to speak with us
6 directly about why you believe that you are
7 suitable for parole. Or you can rely upon your
8 attorney, if you want to, but you also have the
9 chance to talk to us directly. After that and
10 we have received all the information available,
11 we will adjourn the proceeding and deliberate
12 and arrive at a decision, and call you back in
13 and announce that decision, too. Do you
14 basically understand the process? Do you have
15 any questions about any of this?

16 **INMATE JOHNSON:** I understand the
17 process.

18 **PRESIDING COMMISSIONER FARMER:** Okay, now
19 let me talk to you a little bit about the rules,
20 which govern our procedure. We operate pursuant
21 to the California Code of Regulations. Those
22 Regulations states as follows: Regardless of
23 time served, the life inmate shall be found
24 unsuitable for and denied parole if, in the
25 judgment of the Panel, the inmate would pose an
26 unreasonable risk of danger to society if
27 released from prison. And in this process you

1 have certain rights. Those rights include:
2 timely notice of this Hearing; the right to
3 review your Central File; and the right to
4 present relevant documents. And I'm going to
5 ask your attorney if he believes your rights

6 **ATTORNEY DAVEY:** Yes, sir.

7 **PRESIDING COMMISSIONER FARMER:** Okay, do
8 you agree with that, Mr. Johnson?

9 **INMATE JOHNSON:** Yes.

10 **PRESIDING COMMISSIONER FARMER:** Okay.

11 You also have the right to be, have this Hearing
12 conducted by an impartial Hearing Panel.

13 Mr. Wolk and I will be the ones listening and
14 absorbing the information and we have reviewed
15 the file and we will be making the decision in
16 this case. Do you have any reason to believe
17 that we are not impartial in this matter and
18 cannot give you a fair hearing?

19 **INMATE JOHNSON:** You have not given me
20 any indication.

21 **PRESIDING COMMISSIONER FARMER:** Okay,
22 then do I assume that you do not object to us
23 hearing your case?

24 **INMATE JOHNSON:** No. I don't object.

25 **ATTORNEY DAVEY:** Counsel has not
26 objection at this time.

27 **PRESIDING COMMISSIONER FARMER:** Okay.

1 Now, you will receive a copy of our tentative
2 written decision today. When we say tentative,
3 what we do here today is final. Within the next
4 120 days, the decision today is subject to
5 review. It's reviewed in Sacramento, by what's
6 referred to as the Decision Review Unit. And
7 they look at the transcript and determine
8 whether or not, they believe, there are any
9 errors or (indiscernible) of law contained in
10 there. Then, also, subject to review by all of
11 the Commissioners sitting as a body, there are
12 nine of us now, and that's called an En Banc
13 session. All that will happen within the next
14 120 days. At the end of 120 days the decision
15 becomes final. Then after that it is subject,
16 it's given 30 more days for review by the
17 Governor, who, also, has the power to change or
18 reverse anything that happens here. Do you
19 understand that?

20 **INMATE JOHNSON:** Yes.

21 **PRESIDING COMMISSIONER FARMER:** Okay.

22 There have also been changes in the Appeal
23 process that governs these proceedings. It was
24 formerly an Administrative Process, if you
25 disagreed with the decision of the Board Panel
26 or the review, you would appeal that
27 administratively through the Board. That

1 process has been eliminated. Now if you
2 disagree with what the Panel does or the review
3 process does, the remedy is to take that concern
4 to Court or appeal directly to the Court. Do
5 you understand?

6 **INMATE JOHNSON:** Yes.

7 **PRESIDING COMMISSIONER FARMER:** If you do
8 have any further questions about that process,
9 you should consult the prison law library or ask
10 your attorney. All right, please pay particular
11 attention to this that I'm going to tell you
12 right now. You are not required to admit your
13 offense. You are not required to discuss your
14 offense if you do not wish to do so. However,
15 as indicated, the Panel does accept as true the
16 Findings of the Court. You are invited to
17 discuss the facts and circumstances of offense,
18 if you so desire. We will review and consider
19 any prior statements that you have made or given
20 regarding this offense as we determine your
21 suitability for parole. I must next asked your
22 attorney whether or not you intend to speak with
23 us regarding the offense for which you were
24 committed and other aspects of the case?

25 **ATTORNEY DAVEY:** Commissioner, my client
26 will discuss all relevant issues related to this
27 case, including the life crime offense.

1 **PRESIDING COMMISSIONER FARMER:** Do you
2 understand what I've said? And do you agree
3 with (indiscernible) counsel?

4 **INMATE JOHNSON:** Yes. I understand and
5 agree.

6 **PRESIDING COMMISSIONER FARMER:** Thank
7 you. Next I am going to ask the Deputy
8 Commissioner if there is any confidential
9 material in the file and whether or not we will
10 be using any of that material in our Hearing?

11 **DEPUTY COMMISSIONER WOLK:** Yes. There is
12 a considerable amount of confidential
13 information in file. However, we will not be
14 using it today.

15 **PRESIDING COMMISSIONER FARMER:** Thank
16 you. Okay, we're close to getting the
17 preliminary mattes out of the way. I will asked
18 counsel to take a look at the checklist,
19 (indiscernible) whether or not he has received
20 the items contained thereon and if so, please
21 initial and date that.

22 **ATTORNEY DAVEY:** I believe I have all of
23 those documents, sir.

24 **PRESIDING COMMISSIONER FARMER:** Okay.

25 **ATTORNEY DAVEY:** I have initialed the
26 documents and send them back to you, sir.

27 **PRESIDING COMMISSIONER FARMER:** Thank

1 you. Since the corporation of the Hearing
2 packets, we have received additional material,
3 in the form of a letter of opposition, dated
4 August 4, 2005, from the Oakland Police
5 Department. We've, also, received a letter of
6 support, dated September 9, 2005, from
7 Tammeessi, that's spelled, T-A-M-M-E-E-S-S-I,
8 Johnson, Sacramento, California. And we will
9 refer to those at the appropriate time. Have
10 you received those documents, counsel?

11 **ATTORNEY DAVEY:** Yes, sir. I have.

12 **PRESIDING COMMISSIONER FARMER:** Is there
13 any other material that we should be reviewing
14 and considering?

15 **ATTORNEY DAVEY:** Yes, sir.

16 Unfortunately, I have just received, in the last
17 couple of days, some additional support letters
18 that my client's wife faxed to my office,
19 including her support letter, which was faxed to
20 my office evidently last night. My client also
21 has some recent chronos and, I believe, a couple
22 achievement certificates and other documents
23 that we would ask the Panel to consider at this
24 time. Perhaps (indiscernible) Panel.

25 **PRESIDING COMMISSIONER FARMER:** I
26 received the support letters that you mentioned
27 and we will discuss those at the appropriate

1 time.

2 **ATTORNEY DAVEY:** (indiscernible)

3 **PRESIDING COMMISSIONER FARMER:**

4 Commissioner Wolk has the institutional material
5 and he will discuss that at the appropriate
6 time. Are there any objections, preliminary
7 objections?

8 **ATTORNEY DAVEY:** I have none, sir.

9 **PRESIDING COMMISSIONER FARMER:** Okay.

10 And as you will be speaking with us,
11 Mr. Johnson, I'm going ask that you raise your
12 hand and I'm going to sear you in, your right
13 hand. Thank you. Do you solemnly swear or
14 affirm that the testimony that you give at this
15 Hearing will be the truth, the whole truth and
16 nothing but the truth?

17 **INMATE JOHNSON:** I do.

18 **PRESIDING COMMISSIONER FARMER:** Okay,
19 thank you, sir. Now, I'm going to start by
20 examining the commitment offense and reading
21 into the record a description of that offense as
22 it was contained in your Life Prison Evaluation
23 Report. And looking, if you want to follow
24 along with me, I'm reading under Commitment
25 Factors, Offense Summary, which reads as
26 follows:

27 On September 26, 1987, two young

1 men and a young woman were walking
2 in the area of Tenth Avenue and
3 East 14th Street when two men,
4 peren, (one black, one white)
5 close peren, came out of the
6 bushes behind them and shouted,
7 quote, "Task force," close quote.
8 The black man pointed a shotgun
9 and told them to get onto the
10 ground. He then put the shotgun
11 on the woman's neck. At this
12 point a car drove up and stopped
13 for a while and then drove away.
14 The complaining party asked the
15 black man for a badge and in
16 response was hit in the head with
17 the shotgun. The white man took
18 \$12 in cash and his Reebok tennis
19 shoes from the complaining party,
20 and then hit the complainant five
21 more times in the head. On
22 October 16, 1987, two men were
23 waiting for a bus at Tenth Avenue
24 and East 22nd Street, the
25 defendant with two passengers
26 stopped and the defendant asked,
27 quote, "What's happening?" close

1 quote. The victims felt that the
2 defendant was reaching for a
3 weapon and they ran. Two of the
4 co-defendants chased them with
5 firearms, peren, (a revolver and
6 sawed-off shotgun), close peren,
7 and cornered them at the end of an
8 apartment complex. The white co-
9 defendant, identified himself as a
10 police officer, and ordered the
11 victims to lie down. He struck
12 one of the victims in the head
13 with his shotgun barrel and stole
14 \$40 in cash from one of the two
15 people. Both victims described
16 the defendants as nonchalant and
17 confident. On October 21, 1987,
18 at the Nolan Park Zoo, witnesses
19 saw the defendant and white co-
20 defendant, peren, (who was
21 carrying a blue albumin baseball
22 bat), close peren, arguing with
23 the victim. The witness saw the
24 white man hit the victim in the
25 lower-left leg with the bat.
26 Words were exchanged by all three
27 and, at this point, the witness

1 noted that the defendant had a
2 blue-barrel, brown-stock shotgun
3 pointed at the victim. He saw the
4 defendant fire once and then saw
5 both defendants run out of the
6 park. The witness ran to the
7 parking lot and tired a telephone,
8 and while doing so, saw the two
9 defendants run through the parking
10 lot. When the police arrived, the
11 victim was unconscious and it was
12 determined that he had been hit in
13 the stomach. He was pronounced
14 dead at the hospital. On
15 October 26, 1987, a car identical
16 to the one used in the previous
17 incident, stopped in front of the
18 victim, who was waiting for a bus
19 at Ninth Avenue and East 15th
20 Street. The defendant was a
21 passenger and the co-defendant was
22 in the backseat. The defendant
23 got out of the car holding a
24 revolver and said he was a police
25 officer. He told the victim and
26 the witness not to move or look up
27 and immediately thereafter the

1 witness was struck with an object
2 and fell to the ground. The
3 victim saw the white defendant
4 holding the small rifle as he.
5 stood over the witness. The two
6 then took the victim jacket and
7 sneakers and \$16 in cash. They
8 returned the money when they
9 discovered that the victim worked
10 for a living and was not a drug
11 dealer. The Police Report that
12 through October 26, 1987, seven
13 separate incidents, all similar to
14 the first three reported
15 robberies, were reported in
16 Oakland. Two men: one black, one
17 white, and another man driving the
18 car would approach victims and
19 claim to be the police or the
20 narcotic task force and rob
21 people. On October 28, 1987, it
22 was learned that the Vallejo
23 Police Department had three men,
24 matching the description of the
25 suspects in the above car used in
26 the offenses, under arrest. The
27 police recovered a sawed-off

1 shotgun, a long-barrel pellet gun
2 at the time of the arrest. The
3 men had been stopped because the
4 police had had two reports of
5 similar type robberies in a high
6 narcotics selling area in Vallejo.
7 Shots had been fired during one of
8 the robberies. The defendant was
9 contacted at the Solano City Jail,
10 advised of his rights, and elected
11 to waive them. He admitted to
12 being involved in, at least, six
13 robberies, auto thefts and
14 numerous assaults. He also
15 identified the two men arrested
16 with him as being his co-
17 participants. He stated that he
18 had accompanied his friends
19 through Oakland and it was the
20 white defendant's, Steven
21 Munger's, idea to rob drug
22 dealers, stating, quote, "This was
23 the white guy's thing, robbing
24 dope dealers. He's always been a,
25 quote, 'want to be a police
26 officer,'" close quote.
27 This information comes from Probation Report,

1 prepared, in your case, Mr. Johnson, and I'll
2 ask you, is the defendant described in this
3 report, you? And is it accurate?

4 **INMATE JOHNSON:** Yes. It is.

5 **PRESIDING COMMISSIONER FARMER:** We'll ask
6 questions about that later. But at this point,
7 let's talk briefly about your prior record.
8 And, again, referring to the Life Prison
9 Evaluation Report, Pre-Conviction Factors, on
10 Page 3, which describes your record as follows:

11 On January 16, 1985, arrest by the
12 Oakland Police Department for
13 selling and furnishing marijuana,
14 which was referred to the Juvenile
15 Court on January 22, 1985, you
16 stipulated to violation of 11359
17 of the Health and Safety Code and
18 you were placed into wardship and
19 given 15 days in juvenile hall.

20 Is that an accurate description of that
21 incident, sir?

22 **INMATE JOHNSON:** Yes.

23 **PRESIDING COMMISSIONER FARMER:** Okay. On
24 November 28, 1986, the Oakland Police
25 Department, arrest for battery, stipulated to
26 violation of Penal Code Section 242, and
27 continuing wardship and you were released to

1 home supervision by the Juvenile Court on
2 January 27, 1987, after doing six days in
3 juvenile hall. There is further notation on
4 that incident that on November 6, 1987, you
5 failed to attend school, failed to report to
6 juvenile hall, subsequent failures to report to
7 juvenile hall, and that your probation was
8 terminated and you were given 30-days in
9 juvenile hall. Is that accurate? Probation was
10 terminated on 1987. Is that accurate? Did you
11 go to the Hall as a result of those violations?

12 **INMATE JOHNSON:** Yes.

13 **PRESIDING COMMISSIONER FARMER:** Okay.

14 And then the next entries were with theses
15 offenses we just described. Is that an accurate
16 description of your arrests, of you involvement
17 with the law prior to this incident?

18 **PRESIDING COMMISSIONER FARMER:** Yes. It
19 is.

20 **PRESIDING COMMISSIONER FARMER:** Then the
21 Report goes on to describe personal factors. In
22 that same report indicating, here's what it
23 indicates:

24 Prisoners is the product of a
25 casual relationship between his
26 mother, Denise Grayson, spelled
27 G-A-Y-S-O-N, and Leo Johnson. The

1 defendant knows who is father is,
2 the father has never actively
3 involved himself in the prison's
4 life. The prison's natural father
5 has a criminal history of
6 narcotics offenses and theft
7 related offenses. While his
8 mother was pregnant with the
9 prison, she met married another
10 man, who remained in the family
11 home until the prison was five.
12 At that point the mother and
13 stepfather was separated. The
14 mother then began a non-marital
15 relationship with a third man and
16 had three children by him. At
17 that the time of the commitment
18 offense the prison's was mother
19 was supported by AFDC. According
20 to the prison, his mother has
21 always lived in an area known for
22 drug abuse and describes his
23 mother as an alcohol, who goes on
24 binges. In 1986, the prison moved
25 to Sacramento, California, and
26 lived with his grandmother. He
27 states it was his idea to get away

from the high crime area of Oakland. He visited his mother and stepfather on weekends. And it appears that during these visits he began the robbery (indiscernible). The prison did not attend high school in Alameda County. He did attend Grant High School in Sacramento through the tenth grade. On November 13, 1996, he completed and passed his GED test. At the time of the commitment offense the prison had never married and has no children. Since his reception into CDC, the prison has been married twice. His first marriage was on March 8, 1996, at California State Prison, Solano, to Ms. Brenda Smithy, spelled S-M-I-T-H-Y, (indiscernible) divorced on June 30, 2000. On October 7, 2000, he married a Sandra Tobias, spelled TO-B-I-A-S, at DVI, the (indiscernible) remains in tact. He has never been in the military; he has no employment history. He

1 states his health is good. He
2 started drinking at 16, used
3 marijuana on an infrequent basis
4 since 12. He first denied using
5 and abusing narcotic or dangerous
6 drugs but later admitted to using
7 crack when he was 16 or 17.

8 And this summary (indiscernible) comes from,
9 again, the Probation Department. And I'll ask
10 you if that's an accurate description of your
11 life before your (indiscernible) crime?

12 **INMATE JOHNSON:** Yes.

13 **PRESIDING COMMISSIONER FARMER:** Okay.
14 What got you to go up to Sacramento to
15 (indiscernible)?

16 **INMATE JOHNSON:** The neighborhood that I
17 was living in was poverty struck and just
18 problems at home. And, you know, I wanted to
19 finish school so I figured I would have a better
20 chance if I got out of the environment that I
21 was in.

22 **PRESIDING COMMISSIONER FARMER:** The
23 letter that we got from (indiscernible), did I
24 pronounce that correctly?

25 **INMATE JOHNSON:** Yes.

26 **PRESIDING COMMISSIONER FARMER:** Okay.
27 She was living in Sacramento?

1 **INMATE JOHNSON:** Yes.

2 **PRESIDING COMMISSIONER FARMER:** Who were
3 you staying with up there?

4 **INMATE JOHNSON:** My grandmother and my
5 aunt.

6 **PRESIDING COMMISSIONER FARMER:** Is that
7 your idea to go up, to move up there?

8 **INMATE JOHNSON:** Yes.

9 **PRESIDING COMMISSIONER FARMER:** And how
10 was that working out? How did you get from
11 making the decision to go up there to do this?

12 **INMATE JOHNSON:** Well as a result of
13 missing my family, my brothers, my sisters, and
14 my mother, I would go back and visit them. And
15 in the process of going back and visiting , you
16 know, I would start to see, you know, that
17 conditions hadn't changed really. And it was
18 just a lot of (indiscernible), it was just bad
19 in the house.

20 d **DEPUTY COMMISSIONER WOLK:** Who took care
21 of your siblings when you left?

22 **INMATE JOHNSON:** My mother took car of
23 them.

24 **PRESIDING COMMISSIONER FARMER:** How did
25 you hook up with your crime partner?

26 **INMATE JOHNSON:** I was in (indiscernible)
27 --

1 **PRESIDING COMMISSIONER FARMER:**

2 Mr. Munger.

3 **INMATE JOHNSON:** -- relative, that they
4 had been friends before I got to Sacramento.

5 **PRESIDING COMMISSIONER FARMER:** So you
6 met him and known him in Oakland before you went
7 to Sacramento?

8 **INMATE JOHNSON:** No.

9 **PRESIDING COMMISSIONER FARMER:** You were
10 living in Sacramento and visiting --

11 **INMATE JOHNSON:** Yes. I was living in
12 Sacramento. And a relative had introduced him
13 to me, introduced us.

14 **PRESIDING COMMISSIONER FARMER:** Uh huh.

15 **INMATE JOHNSON:** Because they had been
16 friends before I met either one of them. And
17 that's how I met him.

18 **PRESIDING COMMISSIONER FARMER:** And then
19 how did you get going on this crime spree?

20 **INMATE JOHNSON:** Well, at the time I
21 didn't have an automobile to visit my mother and
22 them, so he would take me down there. And in
23 the process, I guess, that's basically how we
24 got started.

25 **PRESIDING COMMISSIONER FARMER:** Whose car
26 were you using?

27 **INMATE JOHNSON:** Mr. Munger's.

1 **PRESIDING COMMISSIONER FARMER:** Who got
2 the guns?

3 **INMATE JOHNSON:** That would be me.

4 **PRESIDING COMMISSIONER FARMER:** And where
5 did you get the guns?

6 **INMATE JOHNSON:** I bought them from some
7 guy in the apartment complex.

8 **PRESIDING COMMISSIONER FARMER:** Okay.

9 When did you go to Sacramento? In '86?

10 **INMATE JOHNSON:** Yes.

11 **PRESIDING COMMISSIONER FARMER:** Is that
12 the connection with your involvement with
13 Juvenile Court? Was Juvenile Court aware of you
14 moving to Sacramento?

15 **INMATE JOHNSON:** I really don't remember
16 whether or not they (indiscernible).

17 **PRESIDING COMMISSIONER FARMER:** Here's
18 what I'm seeing here, you recognized that maybe
19 there's problems in Oakland and maybe Sacramento
20 is a way to get out away from this
21 (indiscernible). So you move up there -- how
22 was school going?

23 **INMATE JOHNSON:** School was going great.

24 **PRESIDING COMMISSIONER FARMER:** You liked
25 going to school there?

26 **INMATE JOHNSON:** Yes.

27 **PRESIDING COMMISSIONER FARMER:** You liked

1 the living situation there?

2 **INMATE JOHNSON:** Yes.

3 **PRESIDING COMMISSIONER FARMER:** Then you
4 had a chance to get away from that, and you
5 obviously messed it up. What was going on?

6 **INMATE JOHNSON:** As I stated, I went
7 back, started going back to visit my family and
8 while doing that, you know, a lot of times I
9 would go back on the weekends to visit my
10 brothers and sisters and they didn't have
11 anything to eat. And the main reason that they
12 didn't have anything to eat was because, at the
13 time, my mother was using drugs. So some of the
14 money, if not all the money, would go to the
15 guys in the neighborhood that was selling drugs.
16 So I just felt, I just felt, you know, I guess,
17 (indiscernible) to feed them. And in the
18 process, you know, the same guys that was in the
19 neighborhood that was collecting the money was
20 the same guys that I was getting money from, or
21 robbing them, to make sure that my brothers and
22 sisters had food and the lights stayed on.

23 **PRESIDING COMMISSIONER FARMER:** Well, you
24 didn't make a whole lot of money from these
25 robberies. Are there others that you did better
26 on?

27 **INMATE JOHNSON:** Yes. There was others

1 that I probably did that I didn't get caught
2 for.

3 **PRESIDING COMMISSIONER FARMER:** And why
4 did you feel a need to carry a loaded shotgun?

5 **INMATE JOHNSON:** Well at the time I
6 wasn't thinking, you know, with my head. I was
7 young and there was just no excuse.

8 **PRESIDING COMMISSIONER FARMER:** In your
9 version of the commitment offense, as described
10 in this report, you indicated that, "A guy got
11 hurt, a guy got killed; it was an accident."

12 What was accidental?

13 **INMATE JOHNSON:** It was more of an
14 incident than an accident. Initially, we went
15 to the zoo, you know, to look around and, you
16 know.

17 **PRESIDING COMMISSIONER FARMER:** Look
18 around? Look around for what?

19 **INMATE JOHNSON:** Just look around and
20 have fun that day.

21 **PRESIDING COMMISSIONER FARMER:** With a
22 shotgun?

23 **INMATE JOHNSON:** Yeah. With a shotgun.

24 **PRESIDING COMMISSIONER FARMER:** You don't
25 go to see the lions and tigers with a shotgun.

26 **INMATE JOHNSON:** No. You don't.

27 **PRESIDING COMMISSIONER FARMER:** You were

1 going there looking for people to rob. Yes?

2 No?

3 **INMATE JOHNSON:** That's not what we went
4 there for. I didn't go there to rob somebody
5 (indiscernible).

6 **INMATE JOHNSON:** Why did you feel the
7 need to carry a sawed-off, a loaded sawed-off
8 shotgun to the zoo.

9 **INMATE JOHNSON:** Well, it was in the
10 automobile.

11 **PRESIDING COMMISSIONER FARMER:** Were you
12 in the car when you confronted these people?
13 How did you go from the car -- where did you run
14 across the people that you ended up shooting?

15 **INMATE JOHNSON:** I happened to see the
16 young man while we were there.

17 **PRESIDING COMMISSIONER FARMER:** You were
18 there inside the zoo?

19 **INMATE JOHNSON:** Yeah. We were there
20 inside the zoo, looking around, sightseeing, so
21 to speak. And in the process, I went back to
22 the car and got the weapon.

23 **PRESIDING COMMISSIONER FARMER:** Why did
24 you do that?

25 **INMATE JOHNSON:** I wasn't thinking.

26 **PRESIDING COMMISSIONER FARMER:** I beg to
27 differ with you. I think you were thinking a

1 lot. You looked at this guy and you decided
2 that this was the guy that you were going to go
3 after. But why?

4 **INMATE JOHNSON:** Well, because I believed
5 that he was a drug dealer.

6 **PRESIDING COMMISSIONER FARMER:** So you
7 guys were looking for and targeting people that
8 you thought were drug dealers?

9 **INMATE JOHNSON:** Yes.

10 **PRESIDING COMMISSIONER FARMER:** Okay, why
11 them?

12 **INMATE JOHNSON:** Well, why them is
13 because those were some of the guys that were,
14 in my opinion, was taking food out of my
15 brothers and sisters mouths, and just causing a
16 lot of stuff in the neighborhood.

17 **PRESIDING COMMISSIONER FARMER:** Did you
18 know this guy?

19 **INMATE JOHNSON:** No. I didn't.

20 **PRESIDING COMMISSIONER FARMER:** Why did
21 you think he was a drug user?

22 **INMATE JOHNSON:** Because of the way that
23 he carried himself (indiscernible).

24 **PRESIDING COMMISSIONER FARMER:** Do drug
25 dealers have a certain look about them?

26 **INMATE JOHNSON:** At times.

27 **PRESIDING COMMISSIONER FARMER:** And you

1 thought this guy had that look?

2 **INMATE JOHNSON:** Yes.

3 **PRESIDING COMMISSIONER FARMER:** So you
4 went back to your car and got the shotgun and
5 then where was it that you confronted him?

6 **INMATE JOHNSON:** At the zoo, by a
7 telephone.

8 **PRESIDING COMMISSIONER FARMER:** Okay.

9 How far was that from the car?

10 **INMATE JOHNSON:** Probably about 80 yards.

11 **PRESIDING COMMISSIONER FARMER:** Did you
12 have a big coat on or something?

13 **INMATE JOHNSON:** Yes.

14 **PRESIDING COMMISSIONER FARMER:** Where you
15 could conceal the weapon. And it was the three
16 of you that were together that day?

17 **INMATE JOHNSON:** Yes.

18 **PRESIDING COMMISSIONER FARMER:** So then -
19 - I'm still trying to find out, figure out what
20 was accidental about it, the shooting.

21 **INMATE JOHNSON:** Well, I didn't mean to
22 shoot the guy (indiscernible). My intentions
23 was not to shoot him. That's why I called it an
24 accident, but as time went on it was an
25 incident; more than an accident.

26 **PRESIDING COMMISSIONER FARMER:** Well your
27 conviction was a murder.

1 **INMATE JOHNSON:** Yes.

2 **PRESIDING COMMISSIONER FARMER:** You had a
3 loaded shotgun, you were there for the purpose
4 of robbing him. How did the gun go off?

5 **INMATE JOHNSON:** I pulled the trigger.'

6 **PRESIDING COMMISSIONER FARMER:** What's
7 accidental about that?

8 **INMATE JOHNSON:** Nothing was accidental
9 about.

10 **PRESIDING COMMISSIONER FARMER:** You're
11 use to that word, your description of the
12 incident is a minimizing of what occurred. You
13 were out to rob the guy. You had a loaded
14 shotgun. You knew exactly what you were doing.
15 And you pulled the trigger, that's what first-
16 degree murder is all about; it's not an
17 accident. Do you understand what I'm saying?

18 **INMATE JOHNSON:** Yes.

19 **PRESIDING COMMISSIONER FARMER:** That's
20 all I have at this point. I'll turn you over to
21 Commissioner Wolk, talk about what you've been
22 doing since you've been I prison. I'm sorry,
23 I'm sorry, (indiscernible) we have to talk about
24 (indiscernible).

25 **DEPUTY COMMISSIONER WOLK:** Are you going
26 to get into parole plans?

27 **PRESIDING COMMISSIONER FARMER:**

1 (indiscernible). Okay, we've talked about your
2 commitment offense, your background, your
3 personal factors. Let's discuss what you would
4 do if you were granted a date today. You were
5 told that you had -- that you would be released
6 in three months, what would be your plans?

7 **INMATE JOHNSON:** My plans would be to go
8 out there and get a job in optics. I would join
9 AA, a local group. And I would also continue to
10 go to church and make sure that I keep all my
11 values in tact and that I continue to help the
12 at-risk youth --

13 **PRESIDING COMMISSIONER FARMER:** Let's
14 just start with something as kind of specific as
15 you are aware of right now. Do you know where
16 you would live?

17 **INMATE JOHNSON:** Sacramento. I would
18 live in Sacramento.

19 **PRESIDING COMMISSIONER FARMER:** All
20 right, and with your wife?

21 **INMATE JOHNSON:** Yes.

22 **PRESIDING COMMISSIONER FARMER:** She
23 stated an address there. Is that where she
24 resides?

25 **INMATE JOHNSON:** Yes.

26 **PRESIDING COMMISSIONER FARMER:** Okay,
27 does she own that house? Is that a rental?

1 **INMATE JOHNSON:** Naw, she owns the home.

2 **PRESIDING COMMISSIONER FARMER:** Okay.

3 And what does she do?

4 **INMATE JOHNSON:** Right now, she's the
5 manager at a major hotel.

6 **PRESIDING COMMISSIONER FARMER:** Okay. So
7 you have a place to reside. You indicate in
8 your report here that you will contact various
9 agencies. Have you had the chance to do any
10 direct contact with any of these people at this
11 point to explore employment opportunities?

12 **INMATE JOHNSON:** I haven't had an
13 opportunity to contact any of those people on
14 that list, right, that you have in front of you.
15 However, I was just enrolled in a program,
16 continuum program, offered by Orange County, I
17 gave you guys some supporting documents as to
18 that. That did my resume for me and they're
19 whole premise for having the program is to make
20 sure that I'm employable and that they will find
21 me a job as well.

22 **PRESIDING COMMISSIONER FARMER:** Okay. So
23 she works out of Sacramento Parole Office and
24 they're describing the program. That's Cindy
25 Turner, employed as a consultant for the Orange
26 County Department of Education, but she is
27 contracting and physically located in

1 Sacramento?

2 **INMATE JOHNSON:** Yes.

3 **PRESIDING COMMISSIONER FARMER:** How did
4 you find out about this opportunity?

5 **INMATE JOHNSON:** From the program, they
6 had flyer's up on the wall. And what I did, was
7 (indiscernible) assignment lieutenant and they
8 assigned me to the class for three weeks. In
9 the class I had the opportunity to meet
10 Mr. Turner personally, and get my resumes
11 updated and finding out more about the program
12 and the opportunities available for people in my
13 chosen field.

14 **PRESIDING COMMISSIONER FARMER:** Which is?

15 **INMATE JOHNSON:** Optics.

16 **PRESIDING COMMISSIONER FARMER:** You're in
17 the lab program?

18 **INMATE JOHNSON:** Yes.

19 **PRESIDING COMMISSIONER FARMER:**

20 (indiscernible), do you like that work?

21 **INMATE JOHNSON:** Yes.

22 **PRESIDING COMMISSIONER FARMER:** Okay. Is
23 it something that you see yourself pursuing?

24 **INMATE JOHNSON:** Yes.

25 **PRESIDING COMMISSIONER FARMER:** And you
26 are learning how to explore employment
27 opportunities in (indiscernible)?

1 **INMATE JOHNSON:** Yes.

2 **PRESIDING COMMISSIONER FARMER:** Okay.

3 Let's talk about support letters that we have
4 received. We send out notices pursuant to 3042
5 of the Penal Code to a varied of effected
6 parties. From that we have received a letter in
7 opposition for the City of Oakland Police
8 Department, dated August 4, 2005, from Richard
9 Andreotti, A-N-D-R-E-O-T-T-I, Sergeant for the
10 Oakland Police Department. They describe
11 reviewing facts of your crime and submit their
12 opposition based that. We also received support
13 letters from Edwin and Jessie Jones, dated
14 July 11, 2005, tell me about Mr. and Mrs. Jones.

15 **INMATE JOHNSON:** Mr. and Mrs. Jones are
16 some nice people that I had the opportunity to
17 meet some years ago. They are very supportive
18 of me and they have opened their arms up to me
19 in terms of a job offer in cleaning some of
20 their real estate properties and just doing
21 commercial maintenance.

22 **PRESIDING COMMISSIONER FARMER:** How --
23 did you know them before your commitment?

24 **INMATE JOHNSON:** No. I didn't.

25 **PRESIDING COMMISSIONER FARMER:** You met
26 them -- how did you meet them?

27 **INMATE JOHNSON:** I met them, their son

1 is, also, unfortunately, in prison. And I had
2 the opportunity of meeting him.

3 **PRESIDING COMMISSIONER FARMER:** Okay.

4 And do you see them?

5 **INMATE JOHNSON:** Yes.

6 **PRESIDING COMMISSIONER FARMER:** Is he
7 located, also, here, at Solano?

8 **INMATE JOHNSON:** Yes.

9 **PRESIDING COMMISSIONER FARMER:** So how
10 often would you say you saw them?

11 **INMATE JOHNSON:** Well I think I see them,
12 probably, about once a month.

13 **PRESIDING COMMISSIONER FARMER:** And they
14 talk about offering a job in Oakland with rental
15 property. And I understand it is your first
16 choice, if you are able to parole to Sacramento
17 County, is to pursue lens --

18 **INMATE JOHNSON:** Yes.

19 **PRESIDING COMMISSIONER FARMER:** --
20 crafting (indiscernible) in that area.

21 **INMATE JOHNSON:** Yes.

22 **PRESIDING COMMISSIONER FARMER:** Then are
23 older letters that are indicated in the file,
24 including letters support for yourself, which is
25 appropriate.

26 **INMATE JOHNSON:** Yes.

27 **PRESIDING COMMISSIONER FARMER:** If your

1 not going to support yourself, who else would,
2 right?

3 **INMATE JOHNSON:** Yes.

4 **PRESIDING COMMISSIONER FARMER:** And
5 that's dated September 20, 1996. A letter from
6 your former wife, Brenda Smithy Johnson,
7 likewise, on October 15, 1996, you are no longer
8 married. She hasn't submitted another letter in
9 opposition so (indiscernible). There's other
10 letters of opposition that were submitted
11 July 11, 2005, from Alameda County District
12 Attorney's Office, reciting the items contained
13 in the report, authored by Tricia Ector, spelled
14 E-C-T-O-R, urging denial. And she outlines,
15 again, the factors indicated in the report and
16 argues it merits a lengthy period of denial.
17 Also, another letter from the City of Oakland,
18 dated June 24, 2005, signed by the same Richard
19 Andreotti, virtually identical in text to the
20 later letter urging denial. And then we have
21 the support letter received from Tammessi
22 Johnson. And again, her relationship -- you
23 told me, right?

24 **INMATE JOHNSON:** Her relationship is
25 she's my aunt.

26 **PRESIDING COMMISSIONER FARMER:** And
27 you're close to the same age?

1 **INMATE JOHNSON:** Yes.

2 **PRESIDING COMMISSIONER FARMER:** Because
3 you were going to high school together?

4 **INMATE JOHNSON:** Yes.

5 **PRESIDING COMMISSIONER FARMER:** It's an
6 interest point to read, when you were together
7 at that one point and you made a decision to go
8 to Grant, you go back commit murder, robbery, up
9 here, and she goes on to San Jose State and
10 appears to be doing quite well. It's sad. But
11 she offers continuing support. And where is she
12 now? Is she back in Sacramento (indiscernible)?
13 What is she doing?

14 **INMATE JOHNSON:** She works for a State
15 agency.

16 **PRESIDING COMMISSIONER FARMER:** Doing
17 what?

18 **INMATE JOHNSON:** Secretary at the
19 Capital.

20 **PRESIDING COMMISSIONER FARMER:** Is she
21 married? Does she have children?

22 **INMATE JOHNSON:** She's not married and
23 has no children.

24 **PRESIDING COMMISSIONER FARMER:** How often
25 do you see her?

26 **INMATE JOHNSON:** I see her about once
27 every three months.

1 **PRESIDING COMMISSIONER FARMER:** All
2 right, anything else that we should be
3 considering that we don't have?

4 **ATTORNEY DAVEY:** I think the letters
5 faxed to my office by my client's wife are
6 relevant.

7 **PRESIDING COMMISSIONER FARMER:** Okay,
8 thank you. A letter dated September 22, 2005, -
9 -

10 **ATTORNEY DAVEY:** Do you need a magnifying
11 glass? (Indiscernible).

12 **PRESIDING COMMISSIONER FARMER:** There's
13 nothing wrong with my eyes -- from Sandra
14 Johnson. You met in here. How often is your
15 wife able to come down?

16 **INMATE JOHNSON:** Twice a month.

17 **PRESIDING COMMISSIONER FARMER:** She
18 offers support, a place to live. She's
19 employed, as indicated in the letter. Another
20 letter from Edwin and Jessie Jones,
21 (indiscernible), previously described a letter
22 from them. This one is dated July 11, 2005.

23 **ATTORNEY DAVEY:** That might be a
24 duplicate, Commissioner Farmer, I'm not sure.

25 **PRESIDING COMMISSIONER FARMER:** Well, if
26 it isn't a duplicate, it's certainly similar in
27 tone offering support. (indiscernible).

1 Another letter dated July 5, 2005, by Wanda
2 Johnson. Who's Wanda?

3 **INMATE JOHNSON:** She's a friend of the
4 family.

5 **PRESIDING COMMISSIONER FARMER:** All
6 right, in what context, how (indiscernible)?

7 **INMATE JOHNSON:** Her and my wife are
8 friends.

9 **PRESIDING COMMISSIONER FARMER:** Okay.

10 **INMATE JOHNSON:** And she goes to an
11 (indiscernible) standing church and, I guess,
12 she was offering a letter of support
13 (indiscernible).

14 **PRESIDING COMMISSIONER FARMER:**

15 (indiscernible) which this is. Do you see her?

16 **INMATE JOHNSON:** Yes. I see her, also.

17 **PRESIDING COMMISSIONER FARMER:** She comes
18 down with your wife (indiscernible)?

19 **INMATE JOHNSON:** Yes.

20 **PRESIDING COMMISSIONER FARMER:** And you
21 met her through your wife?

22 **INMATE JOHNSON:** Yes.

23 **PRESIDING COMMISSIONER FARMER:** A letter
24 from Mona Manley [phonetic], of Prisoner's
25 Rights Union, dated September 7, 2005. She
26 indicates that she has known you through
27 correspondence with the agency. Have you met

1 personally or it because --

2 **INMATE JOHNSON:** No. Correspondence.

3 **PRESIDING COMMISSIONER FARMER:** She urges
4 you on release. Denise Grayson.

5 **ATTORNEY DAVEY:** My client's mother.

6 **PRESIDING COMMISSIONER FARMER:** Okay.

7 She says she's known you all of your life. Are
8 you able to get together?

9 **INMATE JOHNSON:** I see her from time-to-
10 time.

11 **PRESIDING COMMISSIONER FARMER:** How
12 often?

13 **INMATE JOHNSON:** About twice a year.

14 **PRESIDING COMMISSIONER FARMER:** And how
15 is she doing?

16 **INMATE JOHNSON:** She's not doing well, in
17 terms of her health, but her spirits are
18 (indiscernible).

19 **PRESIDING COMMISSIONER FARMER:** She had
20 hard times when you were younger, about the time
21 of this commitment offense, as you've described.
22 Did she kick those problems?

23 **INMATE JOHNSON:** Yes.

24 **PRESIDING COMMISSIONER FARMER:** Okay,
25 that's good, that's good. Did I get all the
26 letters?

27 **ATTORNEY DAVEY:** I believe so,

1 Commissioner.

2 **PRESIDING COMMISSIONER FARMER:** I believe
3 so, too, thank you. Okay, now I'll turn you
4 over to Mr. Wolk, who will discuss with you what
5 you've been doing since you've been in the
6 institution.

7 **DEPUTY COMMISSIONER WOLK:** Okay. Do you
8 have your lens, your Optical Certificate?

9 **INMATE JOHNSON:** No. I haven't completed
10 the course yet.

11 **DEPUTY COMMISSIONER WOLK:** How much
12 longer.

13 **INMATE JOHNSON:** I'd say another 12
14 months.

15 **DEPUTY COMMISSIONER WOLK:** Okay. How
16 long have you been in the program?

17 **INMATE JOHNSON:** Approximately 11 months.

18 **DEPUTY COMMISSIONER WOLK:** But you do
19 have a silkscreen completion. Is that right?

20 **INMATE JOHNSON:** Yes.

21 **DEPUTY COMMISSIONER WOLK:** Would you be
22 able to work in that capacity?

23 **INMATE JOHNSON:** Yes.

24 **DEPUTY COMMISSIONER WOLK:** What could you
25 do?

26 **INMATE JOHNSON:** In terms of silk-
27 screening, I've actually, like I've said, I

1 completed it. So I'm able to do stencil
2 training. I'm able to do frame repair, messing,
3 as well as reclaiming some of the materials once
4 you use the solvents, stuff like that.

5 **DEPUTY COMMISSIONER WOLK:** Are there any
6 companies in Sacramento that you could get a job
7 with?

8 **INMATE JOHNSON:** I don't have any record
9 of any companies in Sacramento. But I'm sure
10 that there are companies available.

11 **DEPUTY COMMISSIONER WOLK:** Is this
12 something that you don't really wish to do?

13 **INMATE JOHNSON:** Well, I figure optics is
14 in high demand, right now. So that would be a
15 more marketable job to get into, as apposed to
16 silk-screening, because right now silk-screening
17 is kind of obsolete, because you've got graphics
18 and computers that do these designs, now. But
19 I'd still be willing to work in that area.

20 **DEPUTY COMMISSIONER WOLK:** Okay. You've
21 also worked in Voc Landscape, Education. And
22 some of the other jobs that you've held were
23 tier tender, grounds maintenance, yard crew,
24 housing porter, you also worked in the book
25 bindery, recreation. Let's see, you actually
26 coordinated the recreation program at Vacaville
27 --

1 **INMATE JOHNSON:** Well that was here.

2 **DEPUTY COMMISSIONER WOLK:** Oh, here?

3 **INMATE JOHNSON:** Yeah.

4 **DEPUTY COMMISSIONER WOLK:** And you've
5 been a culinary clerk. You've worked, pretty
6 much, throughout your stay. You got your GED in
7 '96. You've taken several FEMA courses. And
8 you have two courses from Coastline Community
9 College?

10 **INMATE JOHNSON:** Yes.

11 **DEPUTY COMMISSIONER WOLK:** Do you have a
12 goal in that area?

13 **INMATE JOHNSON:** Well I would like to get
14 an Associates Degree in Health and Science.

15 **DEPUTY COMMISSIONER WOLK:** Okay. Have
16 you done anything else educationally since you
17 came to prison?

18 **INMATE JOHNSON:** Well, I've taken
19 numerous courses: Infectious disease --

20 **DEPUTY COMMISSIONER WOLK:** All the FEMA
21 courses?

22 **INMATE JOHNSON:** No. This is outside of
23 all the FEMA --

24 **DEPUTY COMMISSIONER WOLK:** Okay.

25 **INMATE JOHNSON:** -- courses. Infectious
26 disease, smoking sensation. Just other little
27 courses that were available to me.

1 **DEPUTY COMMISSIONER WOLK:** I show that
2 you've been an active participant in AA since
3 approximately '96.

4 **INMATE JOHNSON:** Yes.

5 **DEPUTY COMMISSIONER WOLK:** You went from
6 '88 to '96, you didn't -- did you drink when you
7 were out?

8 **INMATE JOHNSON:** Yes.

9 **DEPUTY COMMISSIONER WOLK:** How much?

10 **INMATE JOHNSON:** Well, I would drink,
11 probably, a quart of beer a day.

12 **DEPUTY COMMISSIONER WOLK:** Did you use
13 drugs?

14 **INMATE JOHNSON:** Yes. I did.

15 **DEPUTY COMMISSIONER WOLK:** Were you under
16 the influence of anything when you committed the
17 offense?

18 **INMATE JOHNSON:** Alcohol.

19 **DEPUTY COMMISSIONER WOLK:** How much had
20 you had to drink?

21 **INMATE JOHNSON:** Probably about a quart.

22 **DEPUTY COMMISSIONER WOLK:** What time of
23 day was it?

24 **INMATE JOHNSON:** In the morning.

25 **DEPUTY COMMISSIONER WOLK:** Okay. So you
26 have been continuously involved in AA and also
27 some NA. You've taken Anger Management; Parole

1 Recidivism Prevention; Ethics and Values; Self-
2 Confrontation; Time and Management; Bible
3 Studies; you took a Parenting Program; Cessation
4 from Smoking; and you made a financial donation
5 to the Men of DVI Scholarship Fund. You also
6 took a Stress Management Class, this year.

7 **INMATE JOHNSON:** Yes.

8 **DEPUTY COMMISSIONER WOLK:** And
9 participated in the AmeriCan Program back in
10 '93. Anything else to report in the area of
11 self-help?

12 **INMATE JOHNSON:** No. I don't think so.

13 **DEPUTY COMMISSIONER WOLK:** Okay, tell me
14 what tools you have acquired through your AA
15 participation that would attribute to your
16 ability to refrain from any negative behavior?

17 **INMATE JOHNSON:** Would you repeat that?

18 **DEPUTY COMMISSIONER WOLK:** Tell me about
19 the tools --

20 **INMATE JOHNSON:** Oh, okay.

21 **DEPUTY COMMISSIONER WOLK:** -- that you've
22 acquired through your AA participation that
23 would assist you in maintaining a crime free
24 life.

25 **INMATE JOHNSON:** Well, first of all, I
26 know that doing my sobriety every day has to
27 deal with that, because that is something that I

1 have to deal with. So one of the tools that
2 I've been able to gain from AA was admitting
3 that I have an alcoholism problem, as well as
4 being able to sit in a group of people and be
5 able to communicate to them what my problem was.
6 So what that does is give me -- it allows me the
7 opportunity to bounce off other people the
8 adverse effect that alcohol has had on me. So
9 what that does is, again, give me the
10 opportunity to know that I have practice my
11 sobriety one-day at a time, take things to heart
12 and know that it is serious, dealing with
13 alcohol.

14 **DEPUTY COMMISSIONER WOLK:** Okay. Do you
15 stay in touch with any of your co-defendants?

16 **INMATE JOHNSON:** Yes.

17 **DEPUTY COMMISSIONER WOLK:** Both of them?

18 **INMATE JOHNSON:** No.

19 **DEPUTY COMMISSIONER WOLK:** Which one.

20 **INMATE JOHNSON:** I stay in which with
21 Monitor [phonetic].

22 **DEPUTY COMMISSIONER WOLK:** Monitor?

23 **INMATE JOHNSON:** Yes.

24 **DEPUTY COMMISSIONER WOLK:** Is he here?

25 **INMATE JOHNSON:** Yes.

26 **DEPUTY COMMISSIONER WOLK:** Okay, we're
27 going to review your disciplinary record. You

1 have five CDC 115s that you got in 1988:
2 Failing to report to work; possession of inmate
3 manufactured alcohol; failing to report to work;
4 leaving job assignment without permission;
5 responsibility count. And then you didn't get
6 another one until '95, and that was for
7 participation on a work stoppage. And then in
8 '99 you got your last one, and that was for
9 sexual misconduct during visiting. You have 12
10 CDC 128As. The most recent was in 2001, and
11 that was for excessive contact with a female
12 visitor in visiting. The rest of them are
13 mostly failing to report to work. You had an
14 inmate manufactured tattoo gun; cassette tape;
15 stereo; altered State clothing; and a Walkman
16 tape player; improper use of State phone. So
17 you've been free of any disciplinaries since
18 2001. And free of any 115s since '99. Is that
19 correct?

20 **INMATE JOHNSON:** Yes.

21 **DEPUTY COMMISSIONER WOLK:** Your custody
22 level is Medium A, your classification score is
23 19. And let's see, I have a chrono that I would
24 like to read here. This is a chrono dated
25 July 7, 2002:

26 Inmate Johnson has worked under my
27 supervision as the culinary clerk

1 for the past two years. His
2 primary duties consist of
3 preparing inmate wake-up lists,
4 which includes scheduling up to
5 200 inmates reporting to work at
6 various times. Other duties are
7 maintaining new inmate assignments
8 and inmate reassessments and memos
9 and general clerical duties.
10 Johnson has maintained an accurate
11 list of inmates scheduled to work,
12 which is very important in
13 facilitating institutional
14 feeding. He has maintained a
15 positive attitude and exceptional
16 work ethic toward the job, staff,
17 and inmates alike. During this
18 time period, Johnson has appeared
19 to make positive changes in his
20 life, including the willingness to
21 help others. Based on my 20 years
22 of experience, I attribute
23 Johnson's changes to his voluntary
24 involvement in various self-help
25 groups and activities. Signed
26 Correctional Sergeant Morani
27 [phonetic].

1 You have numerous laudatory chronos in your
2 file, which recognize your professionalism and
3 hard work. This is a completion of chrono for
4 the Stress Management Class. Participation in
5 AA chronos, and this is an achievement chrono
6 regarding your receiving above-average scores in
7 almost all categories of the work supervisor
8 report:

9 "Johnson has maintained above-
10 average work attendance and shows
11 a desire to learn the occupation
12 of optical goods work. He has an
13 interest in obtaining the American
14 Board of Opticianry National
15 Certificate. He is respectful
16 towards staff and his conduct is
17 above-average."

18 In a psych report, let's see if I can find it.
19 Psych report, which is dated January 6, 2005,
20 which I find to be, apparently, fairly accurate,
21 it's done by Dr. Davis, Preston Davis.

22 Mr. Johnson comes from an
23 impoverished background, with
24 parents that abused drugs and
25 didn't work regularly or at all,
26 and who were not positive role
27 models for him. Given his

1 environment, Mr. Johnson's past is
2 not filled with arrests and he was
3 not involved with gang activity.
4 He did not finish high school, and
5 he became involved with negative
6 associates. He was irresponsible
7 and had little regard for others.
8 This lead him down the path of
9 illegal activities and eventually
10 making the mistake of murdering
11 someone. Since his incarceration,
12 Mr. Johnson has done much sole-
13 searching and self-growth. He
14 fully regrets his past criminal
15 activities and involvement with
16 negative associates, his up-
17 brining, and his involvement in a
18 murder. He feels tremendous
19 remorse for the victim and for the
20 victim's family and friends.
21 These feelings and thought have
22 developed over time and he has
23 developed insight into his past,
24 his crime, and where he wants to
25 be in his future. He understand
26 that his murder that the victim
27 cannot have a future, and that his

1 behavior might have negatively
2 effected many other people's lives
3 in the victim's family.

4 How about in your family?

5 **INMATE JOHNSON:** My family is
6 (indiscernible).

7 **DEPUTY COMMISSIONER WOLK:** How did your
8 siblings turn out, the ones that you were caring
9 for when you were 12?

10 **INMATE JOHNSON:** Excuse me.

11 **DEPUTY COMMISSIONER WOLK:** That's okay.

12 You don't have to answer.

13 Mr. Johnson has been grateful.
14 Has employed the benefit of
15 numerous educational opportunities
16 within the CDC. He earned his
17 GED, which helped him to think and
18 process information in more
19 abstract, mature and intelligent
20 ways. He completed many
21 certificate courses, which gave
22 him much practical knowledge and
23 employable skills. He fully
24 benefited from multiple
25 therapeutic courses that he
26 finished while an inmate. He
27 learned healthy coping skills, how

1 to manage anger, how to
2 effectively communicate with
3 others, and many more helpful way.
4 He learned about the consequences
5 for his actions, whether good or
6 bad. He embraced religious
7 doctrine and learned some positive
8 morals and values to live his
9 life. He learned about how his
10 actions on this earth may effect
11 his eternal sole. He learned
12 about live, fear, retribution,
13 redemption, and salvation.

14 Mr. Johnson seems to have
15 effectively blended, absorbed, and
16 integrated all that he has learned
17 from his educational, therapeutic,
18 and religious studies. He did not
19 have to participate in all that he
20 has but he did so to become a
21 better person. He has a place to
22 live, support from his wife and
23 family, and idea for employment
24 upon release from the CDC. He has
25 not used illegal drugs or alcohol
26 and has made sure that he has the
27 important mental tools to fortify

1 him against future use. He
2 appears to show a low risk of
3 dangerousness and violence if
4 released to the public, at this
5 time. If he is provided with a
6 stable living environment and
7 employment and does not associate
8 with negative individuals, he will
9 have a better chance of coping
10 with his release.

11 That's quite a supportive letter. Do you have
12 anything that you would like to add at this
13 time, regarding any programming or anything that
14 we've talked about?

15 **INMATE JOHNSON:** Well, one thing that I
16 would like to add is one thing that I've
17 learned, over the course of time, is that the
18 incident that happened, not only effected my
19 life and my families life, but the victim also
20 had family and people that I effected. And I
21 take the time, some time ago -- and one of the
22 Steps that NA, in order to get through these
23 Steps, you have to try to make amends, whenever
24 possible. And I haven't had that opportunity to
25 address that issue. So I never got the
26 opportunity to get past the Eight Step. What it
27 is, I wrote a letter that I would like to read

1 to the victim's family.

2 **DEPUTY COMMISSIONER WOLK:** Could you
3 speak up, just a little bit, when your reading
4 it?

5 **INMATE JOHNSON:** Yes.

6 To the Bradford Family, Alameda
7 County, and the Great Citizens of
8 California. I, Leandre Johnson,
9 write this letter of apology for
10 my irresponsibility and lawless
11 actions, which lead to the
12 shortness of a young man's life.
13 I take responsibility for my
14 actions, which I am not proud of.
15 There is absolutely no justifiable
16 reason for my past actions. I am
17 remorsefully sorry for the
18 enormous pain and void that I have
19 caused this young man and his
20 family and so many others. I can
21 only hope that the measure of my
22 actions will be forgiven as I do
23 carry the burden of my biggest
24 mistake. And I hope to use my
25 testimony to help some wayward
26 youths not to make the very same
27 mistake as I. Remorsefully,

1 Leandre Johnson.

2 **DEPUTY COMMISSIONER WOLK:** When did you
3 write that letter?

4 **INMATE JOHNSON:** I wrote this letter last
5 year.

6 **DEPUTY COMMISSIONER WOLK:** At this time I
7 will turn the microphone back to my colleague.

8 **PRESIDING COMMISSIONER FARMER:** I have no
9 further questions. Do you have any other
10 questions in any other areas?

11 **DEPUTY COMMISSIONER WOLK:** No.

12 **PRESIDING COMMISSIONER FARMER:** Okay.

13 Counsel, do you have any questions?

14 **ATTORNEY DAVEY:** No, sir. I have no
15 questions of my client.

16 **PRESIDING COMMISSIONER FARMER:** We will
17 then move to closing statements.

18 **ATTORNEY DAVEY:** Thank you, sir.

19 Mr. Johnson admits his participation in this
20 murder, freely admits it, freely discusses it
21 with the Panel. And has expressed his remorse
22 to the Panel, to the family through his last
23 statements on the record, regarding the letter
24 that he wrote to the victim's family and the
25 citizens of California. When I review this
26 file, you know, I looked at Mr. Johnson's
27 history, and I said, "Gees, what in the world

1 was going on," just as Commissioner Farmer did.
2 And it appears that he had kind of a hard up
3 brining, living in Oakland, as a lot of young
4 men do. He did reach out to his family in
5 Sacramento and moved over there. He completed
6 two or three years of high school there,
7 satisfactorily. But, unfortunately, he feel
8 back into the criminal activity, that was
9 described in this file, when he went back to
10 visit his extended family for weekends, in the
11 Oakland area. Again, we're not sitting here
12 apologizing for that, I'm sorry, denying any of
13 that, but he does accept his responsibilities
14 for participating in those activities. Any
15 murder of a human being is a horrendous crime.
16 This gentleman was killed in an attempted
17 robbery, it appears, and Mr. Bradford's family
18 lost they're son; there's no other explanation.
19 But we have to move away from the crime at some
20 point in time, and focus on rehabilitation of an
21 inmate suitable for parole to define risks in
22 the community, or potential risks in the
23 community. Mr. Johnson, although he had, as
24 Mr. Wolk described, write-ups when he first came
25 into prison, in '88, I think, he had half-a-
26 dozen or close that in various incidents. He
27 went approximately ten years without any further

1 write-ups and last one was in 1999 for the
2 incident that happened in the visitation area,
3 at one of the prison's he was incarcerated in.
4 I think he knows the rules. He knows how to
5 apply the rules. He knows how to abide by the
6 rules of the prison system. He's been
7 disciplinary free, no serious 115s since 1999.
8 What else has he done? He's gain a vocation in
9 silk-screening; he's gain, about, one year in
10 the vocational lens lab, here at CSP, Solano,
11 with his desire to finish that occupation; he
12 has worked in other areas of the prison system
13 during his approximately 17 plus years, as
14 described by Commissioner Wolk, in landscaping,
15 boarder, book bindery. And it appears that
16 throughout the work history he's gotten average
17 to above-average, to and including, exceptional
18 work reports, including the chrono that was read
19 into the record by Commissioner Wolk from the
20 Culinary Services Sergeant. He's not been
21 sitting still worrying about what's going to
22 happen, when it's going to happen; he's tried to
23 improve himself. As described in the
24 psychological report, generated for this
25 proceedings, he has gained insight, he has
26 learned through his self-help programs, most of
27 which were not mandatory but he took it upon

1 himself and participated in how to be a better
2 man, how to be a better person, how to be a
3 better citizen, whether he's sitting in State
4 prison or on the street in the free community.
5 He's completed correspondence courses; he's
6 completed his GED, prior; and he's still taking
7 correspondence courses. He has accomplished a
8 number of years in AA slash NA. And he's
9 indicated to the Panel that's been very helpful
10 in his recovery process and his ability to
11 remain substance, control substance and/or
12 alcohol free. I note in my review of the
13 record, that he only had one write-up for inmate
14 alcohol and that was way back in 1988. So he
15 has not had a problem with that, it appears,
16 since that point and time. He practices the
17 NA/AA Steps, as indicated by his making amends
18 to (indiscernible), informally, on the record
19 here, the victim's family. He's taken Anger
20 Management courses; he's taken Ethics courses;
21 he's taken Bible Studies; parenting classes; the
22 Quite Smoking Program. I'm not going into
23 everything that he's done, but there are
24 numerous laudatory chronos in the file about the
25 good things that he's accomplished since he's
26 been in custody. Mr. Johnson has accomplished a
27 lot and they are very positive accomplishments.

1 And I hope the Board does give him recognition
2 for that at the appropriate time. Mr. Johnson
3 was not a good boy when he was young. He got in
4 trouble in the juvenile arena. He does admit
5 that he did have contact with the Juvenile Court
6 on several occasions, the last being six months
7 or a year before the commitment offense. The
8 commitment offense is his only adult arrest and
9 conviction. Again, it's a biggie, robbery and
10 murder. Mr. Johnson's personal factors and his
11 home stability were somewhat mixed. Again,
12 that's been discussed. He did attempt to move
13 to Sacramento to "get away," quote, unquote,
14 from the crime-ridden area that he was living in
15 in Alameda County slash Oakland. And did
16 complete several years in Grant Union High
17 School in Sacramento. He still has the support
18 of his family in Sacramento, visa via the letter
19 from his aunt, who, I believe, is at least one
20 of the persons he was living with at that point
21 in time, and is very supportive his request for
22 parole. He is married. He's been married for
23 five years to Ms. Sandra Johnson, who is very
24 supportive of his release and writes a letter
25 accordingly. There are letters in the file
26 submitted on behalf of Mr. Johnson's request for
27 parole from various other relatives, including

1 his mother, including acquaintances. And there
2 are at least two job offers that I found in the
3 letters that were submitted, including the one
4 from Orange County employment opportunities and
5 they're ability to help Mr. Johnson find a job
6 in the Sacramento area, and the property
7 management job in Oakland, from the friends
8 there in Oakland, and that's an alternative
9 placement for him. His desire is, obviously, to
10 parole to Sacramento to his wife. And, again,
11 his re-entry into society is better in
12 Sacramento. I believe, he will do good on
13 parole. He is requesting the Panel find him
14 suitable for parole at this time. And I'm not
15 going to go into each line-item of the
16 psychological report, but Mr. Wolk did in his
17 assessment, he read, pretty much the whole
18 conclusionary statement and the estimated future
19 dangerousness in the community into the record,
20 with the bottom line finding of Preston Davis,
21 Ph.D., on this evaluation of January of this
22 year, that "Mr. Johnson would be a low risk of
23 dangerousness and violence if released to the
24 public at this time." He further states, "If
25 he's provided with stable living environment and
26 employment and does not associate with negative
27 individuals, he would have a better chance of

1 coping upon his release." And as noted,
2 previously, he's got a stable home. He's got a
3 stable home with his wife. He's got employment
4 possibilities out there that are either promised
5 or in the promise of being activated for him.
6 He is putting together a resume to send out to
7 prospective employers. And it is his hope that
8 if he is not granted parole, at this point in
9 time, that he will further be able to complete
10 his vocational lens craft and get his American
11 Optical Certification so that he has another
12 viable occupation that he can obtain employment
13 in the community. There is one other issue,
14 which Mr. Johnson wishes me to raise. And that
15 is, during his sentencing at the Trial Court
16 level, he did plea out on this one, murder and
17 the associated robberies, as indicated by the
18 record which indicates that he did that on
19 advise of counsel and advice of the district
20 attorney and, to a lesser extent, family members
21 that were helping him make his decision. It was
22 his belief and, I think it's probably a mistake
23 on the Trial Court's Judge's statement, but it's
24 his belief that he was sentenced to a fixed
25 term, not an indeterminate term, and he is
26 asking the Board to review the transcript,
27 wherein -- I don't have a page number, but it's

1 about ten or 12 pages in, where the inmate asked
2 that, "I would have a release date," the Court
3 responded, "Well, you will, indeed, that is an
4 automatic with the Department of Corrections.
5 They will set that date." And it goes on on a
6 previous page, at about Page 11, where his
7 defendant counsel, on a similar statement to the
8 Court, from Mr. Johnson indicates, "How many
9 years will I have to do of that?" The Court
10 says, "Your attorney can advise you." Mr. Cole
11 indicated a statement that "It is essentially up
12 to the Department of Corrections. And we had
13 discussed, currently, what the rough estimate
14 is." He further states that, "You will be
15 released in due course on parole and essentially
16 that would be up to the Department of
17 Corrections, and that would depend on your
18 sentence and conduct in prison." It was
19 Mr. Johnson's belief that he would or could,
20 potentially, be released on his minimum eligible
21 parole date. I have talked to Mr. Johnson about
22 that and calculated, at this point, his minimum
23 eligible date would be January 20, 2006, which
24 is next January, the upcoming January. His
25 request of this Panel is that he be released on
26 that date. And we would submit the matter with
27 that, that he be granted parole. Thank you.

1 **PRESIDING COMMISSIONER FARMER:**

2 Mr. Johnson, this is now you opportunity, if you
3 wish, to address us directly, as to why you
4 believe you are suitable.

5 **INMATE JOHNSON:** I believe I'm suitable
6 because over the years I've taken the time to
7 really get to value, value life. I've had
8 opportunity to mature and, of course,
9 participate in a bunch of different programs
10 that provide me the necessary tools to think; to
11 be a more responsible person; to be more
12 compassionate towards everybody. It's also my
13 belief that there's no excuse for my actions.
14 But at the same time, I would like to be given
15 the opportunity to be a part of society and
16 having a second chance. And I ask the Panel to
17 grant that.

18 **PRESIDING COMMISSIONER FARMER:** Okay.

19 **ATTORNEY DAVEY:** Commissioner, I did, and
20 I hate to do this, but I did forget one area and
21 it's a very important area for the Panel to
22 hear. You heard Mr. Johnson's statement, I
23 think a couple of answers to Mr. Wolk regarding
24 his alcohol and narcotics anonymous program, and
25 he plans (indiscernible) participating in that
26 in the community should he be granted parole and
27 he would not object, obviously, to the

1 conduction that he participate in that program.

2 Thank you.

3 **PRESIDING COMMISSIONER FARMER:** All
4 right, thank you very much Mr. Johnson. The
5 time is now 11:18. We will adjourn and call you
6 back when we have a decision.

7 **R E C E S S**

8 **--oOo--**

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1 **CALIFORNIA BOARD OF PAROLE HEARINGS**

2 **D E C I S I O N**

3 **DEPUTY COMMISSIONER WOLK:** Okay. We're
4 on record.

5 **PRESIDING COMMISSIONER FARMER:** The time
6 is 11:40. We're back on record in the matter of
7 the case of Leandre Johnson, D-88755.

8 Mr. Johnson, we have reviewed all information
9 contained in your file, received from the
10 public, and discussed during the course of the
11 Hearing, and relied upon the following
12 circumstances to conclude that you are not
13 unsuitable for parole at this time and you pose
14 an unreasonable risk of danger to society or a
15 threat to public safety if released from prison.

16 This is your first time through this process and
17 I've talked to you a little bit about that,
18 particularly in light of counsel's comments,
19 regarding some contentions that you made
20 regarding your understanding of that at the time
21 of sentencing. I indicated to you and, I
22 discussed the procedure, we operate under State
23 Statutes, Regulations, Court rules, and
24 Government Parole Consideration Hearing, as
25 described, and set forth the factors that we
26 we're to discuss and look at to determine
27 **LEANDRE JOHNSON D-88755 DECISION PAGE 1 9/23/05**

1 whether or not you are suitable. Now, under our
2 system, your eligibility is not set at the time
3 of sentencing for the type of sentence for which
4 you were committed. You were given an
5 indeterminate term, which had a minimum sentence
6 of 27 years, in your case, with appropriate
7 credit times are computed, to life. That means,
8 pursuant to Court decisions that you could be
9 incarcerated for the rest of your life. It
10 doesn't mean that that has to happen, but there
11 certainly is no guarantee that it would be
12 anything less. That depends on all the factors
13 that we've talked about. That's what these
14 Hearing are about. Now, your attorney made some
15 comments regarding your understandings about
16 what you believed would happen at the time of
17 your sentencing. If you believe that there was
18 a legal error at the time of your sentencing,
19 what you do is take that back to the Court,
20 consult with an attorney and file appropriate
21 documents. If you believe that you were
22 erroneously sentenced or that there was a
23 problem with that, you need to go back to Court.
24 Another avenue that I might suggest is that I
25 talked about the Notice under 3042, we send
26 notices to the Police Department, District
27 **LEANDRE JOHNSON D-88755 DECISION PAGE 2 9/23/05**

1 Attorney's Office, the attorney that represented
2 you, lots of different people, inviting comments
3 from them regarding your Hearing. They get
4 notice of this and they have the opportunity to
5 come here. The District Attorney's Office sent
6 a letter, sometimes they appear. The Police
7 Department sent a letter. There was a letter
8 also sent to your sentencing Judge, okay, who
9 has the ability to comment and make
10 recommendations. It's not often that we receive
11 letters, sometimes we do; sometimes we receive
12 letters in favor of the inmate. And so, if you
13 think it appropriate, you may wish to contact
14 the sentencing Judge, you write a letter to the
15 sentencing Judge and see if he has
16 (indiscernible) regarding your case
17 (indiscernible) allow you to intervene. I give
18 you that information just as information. We do
19 not -- we are not bound -- there's been no Court
20 Order restricting our ability to process your
21 case any differently than we process any other
22 case. I want to start off in saying that you're
23 unsuitable for parole, based upon our process.
24 Now, let me go through that process and tell you
25 where this goes from here and what happens next.
26 We have indicated that you are unsuitable for
27 **LEANDRE JOHNSON D-88755 DECISION PAGE 3 9/23/05**

1 parole and when we look, when we make that
2 determination, we first look at the commitment
3 offense, (indiscernible) facts of that
4 commitment offense will never change, and that's
5 true they won't. But those are facts that will
6 always be addressed. And the significance of
7 those facts, in your case is that you have
8 committed, through the primary commitment
9 offense of the murder and the totality of all
10 the crimes for which you were committed, is an
11 extremely aggravated case, which gives you a
12 steep mountain to have to climb. And you need
13 to be aware of that and deal with it, which is
14 that the offense was carried out in an
15 especially, in the regulatory language
16 conclusions which I'm reading, in an especially
17 cruel and callous manner, in that, by the series
18 of crimes, multiple victims were attacked and
19 injured and one was killed, in separate
20 incidents, all of which were charged and
21 prosecuted within the same complaint. And that
22 the motives for these crimes were trivial in
23 relation to the offense, the amount of moneys --
24 it's unclear whether your motive was, as you
25 indicated, (indiscernible) band of retribution
26 for the drug dealers or whether you were out to
27 **LEANDRE JOHNSON D-88755 DECISION PAGE 4 9/23/05**

1 go after people that you though had money or get
2 their money by ill-gotten means, or a
3 combination of all of those. But, in any event,
4 nobody appointed a band of vigilantes to go out
5 and clean up the drug traffic (indiscernible).
6 And certainly it was not all that financially
7 rewarding, that you could have gotten minimal
8 amounts of money in tennis shoes or going out
9 and beating these people up, terrorizing them,
10 armed with weapons, sawed-off shotguns, loaded,
11 carried. You were an aggressive gang of thugs.
12 And, fortunately, you were identified and
13 stopped in time, because it's not difficult to
14 speculate that having succeeded to the extent
15 that you had succeeded, there is a high
16 likelihood that somebody else would have died,
17 because you would have continued doing what you
18 were doing until you were caught. And it's this
19 almost mini-reign of terror, certain, that had
20 that result and resulted in the death of the
21 victim in this case. But, I think, it's
22 important to say what things are, and it wasn't
23 an accident, it wasn't an incident, it was
24 murder. And you were well advised to address it
25 in that context. You loaded your guns, you took
26 your guns, you went out, you knew what you were

27 **LEANDRE JOHNSON D-88755 DECISION PAGE 5 9/23/05**

1 about to do and you did it. And I don't know,
2 I'm not saying that you went out with specific
3 intent to kill this guy, but you were certainly
4 prepared to do that. And when whatever
5 happened, whether he said something back at the
6 wrong time or he didn't move fast enough, or you
7 were feeling particularly aggressive that day, I
8 don't know the immediate dynamics, but you
9 pointed that gun at him and you pulled the
10 trigger and that's murder. And you are well
11 advised to say it just like it is. This crime
12 was a culmination of kind of a short but
13 significant, I think, juvenile history, where
14 you got in trouble a few times, enough to come
15 to the attention of the authorities, come to the
16 attention of the Juvenile Court. We've
17 described those offenses and it gets a little
18 more serious each time and Juvenile Court tries
19 to intervene and you were declared a ward to
20 address those issues so that you won't end up
21 where you are now. And obviously you were not
22 receptive to that message and it didn't take.
23 So that demonstrates an escalating pattern of
24 criminal conduct. It also indicates that you
25 have failed to profit from society's previous
26 attempts to correct your criminal behavior

27 **LEANDRE JOHNSON D-88755 DECISION PAGE 6 9/23/05**

1 through the juvenile process, as we have
2 described. So that gets you here. And you have
3 been in custody for a significant period of
4 time. And we really have no quarrel with your
5 institutional behavior, and, in fact, commend
6 you for what you've done. You do appear to have
7 gone through a process of very positive change.
8 You have upgraded yourself educationally,
9 vocationally. You've engaged in self-help. We
10 can always sit here and say you should do more,
11 and, I think, it always is important as a
12 continuing life-long process. That's not
13 something that, as I think, you appreciate,
14 that, you know, it starts on one day and ends
15 and you say, "well, I'm okay now." This is
16 something that you have to continue to be
17 involved in during the time here. So we commend
18 you for what you've done and we want you to
19 continue doing that. We've considered the
20 psychological report, prepared by Preston Davis,
21 on January 6, 2005, and, again, it's positive.
22 All of which says to us that you are moving in
23 the right direction. We don't want to
24 discourage you by what we say today, but we also
25 want to be realistic with you, that in balancing
26 the good that is accomplished against the

27 LEANDRE JOHNSON D-88755 DECISION PAGE 7 9/23/05

1 enormity of the crimes that occurred, this
2 process requires a period of time to ensure that
3 the gains that you have made and your appearance
4 before us and what you say to us is, not only
5 sincere in the way it sounds, but sincere in the
6 way it is demonstrated over a length of time.
7 And the more serious your crime, the more
8 cautious we are to ensure that what you say is
9 not only true today but it's going to be true
10 for the rest of your life. So that when we
11 release you, authorize your release, we can
12 assure anybody in the community, anybody who
13 might be your neighbor, anybody who might be
14 walking to the zoo, that you're not going to
15 revert back to (indiscernible) with the sawed-
16 off shotgun and rob and murder (indiscernible).
17 So you are on a journey, which is going the way
18 that the Board would like to see it go. Your
19 parole plans, as they are developed now, and as
20 you indicated, they are continuing to evolve.
21 (indiscernible) the lens business, which you
22 haven't completed that program, and we know it
23 is your intent to do so; that's appropriate and
24 we encourage you to do it. And as you get that
25 Certificate then you are going to be better able
26 to market yourself to prospective employers.
27 **LEANDRE JOHNSON D-88755 DECISION PAGE 8 9/23/05**

1 It's a good program, there are jobs out there
2 for that program (indiscernible) has the
3 opportunity for big reward. As indicated, this
4 process does not happen overnight. And based
5 upon the significance of your crimes and where
6 you are on that journey, we believe and in a
7 separate decision we find that it is not
8 reasonable to conclude that you would be
9 eligible for parole and you are denied parole
10 for a period of three years, because, again, the
11 serious nature of the crime and where you are on
12 that journey. The danger (indiscernible) in
13 relationship to the crime that occurred and
14 where you are have to be viewed as recent and
15 you must continue to demonstrate, over an
16 extended period of time. What we see today is
17 not just a good presentation from what is
18 obviously an intelligent man, I think, that
19 letter from your aunt, is in reality, -- it's
20 like a sister of your same age and two people in
21 the same place, she ends up going to San Jose
22 State and you end up here. Sometimes the
23 decisions we make in life have fairly
24 significant consequences, as you obviously have
25 perceived. But you do have a good core of
26 support there and it is important that you

27 LEANDRE JOHNSON D-88755 DECISION PAGE 9 9/23/05

1 continue to utilize. You're wife is, from what
2 we can read here and we've seen you for what,
3 two hours, and we really don't know a whole lot
4 about you other than what we've read here, but
5 you make a good presentation here. You appear
6 to have good abilities, you've got good family
7 by your words. You give responses that make you
8 hopeful. So when I say, "Yes, you've been
9 sentenced to a life-term." That doesn't mean
10 that you have to spend the rest of your life
11 here. But if you continue to do the things that
12 you are doing for this next period of time, as
13 I've suggested, then there is a very good
14 likelihood that you will be given a date and be
15 released. We have considered the input from the
16 District Attorney from Alameda County, by
17 they're letters. Also, the Police Department of
18 the City of Oakland, by their letters, as well
19 as the letters submitted on your behalf. We
20 want to emphasize that it's important that you
21 take from this the recommendations that you
22 continue to do what you are doing, and most
23 especially to be disciplinary free. Continue
24 with AA. Those are the kinds of things that the
25 Panel will always look at. The slightest
26 infraction on your disciplinary record will

27 **LEANDRE JOHNSON D-88755 DECISION PAGE 10 9/23/05**

1 significantly impair your chances to be granted
2 a date in the future. So I can't emphasize that
3 enough, how important that it is. That you
4 continue to upgrade, both vocationally,
5 educationally, you continue to go to the self-
6 help programs that you have engaged in and that
7 you remain disciplinary free. I think, sir,
8 that you have the possibility of a bright
9 future. We want you to continue on the path and
10 make the most of those opportunities. That
11 concludes my remarks.

12 **DEPUTY COMMISSIONER WOLK:** You have an
13 exceptionally bright future. Don't let anybody
14 get in the way of it. Every minute of the day,
15 you have the opportunity to make a choice, make
16 the right choices and you'll get out of here.
17 Don't get any 128s or 115s. Keep going where
18 you're going, doing what you're doing. Keep a
19 strong spiritual foundation and you'll get out
20 of here someday. And maybe not too far in the
21 future.

22 **PRESIDING COMMISSIONER FARMER:** I don't
23 know what your expectations were when you came
24 in here. Sometimes people come in to the first
25 Hearing and go, "I'm reformed, I'm good, I'm
26 going to get a date." It doesn't work that way.

27 **LEANDRE JOHNSON D-88755 DECISION PAGE 11 9/23/05**

1 And now you see the reality of that. But I also
2 hope that you take to heart the comments that we
3 have given. We see a lot of people. A lot of
4 people are going to stay here the rest of their
5 lives. You have the ability not to have that
6 happen. Don't let it slip away. The time is
7 now --

8 **ATTORNEY DAVEY:** Commissioner, I'm sorry
9 to interrupt. In light of the multi-year
10 denial, I would request a new psychological
11 evaluation, put an (indiscernible) to include,
12 you know, what he's done between now and then.

13 **PRESIDING COMMISSIONER FARMER:** And that
14 is appropriate and we have made --

15 **ATTORNEY DAVEY:** Thank you.

16 **PRESIDING COMMISSIONER FARMER:** -- that
17 recommendation. I'm sorry that I didn't mention
18 it.

19 **ATTORNEY DAVEY:** Okay.

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27 **LEANDRE JOHNSON D-88755 DECISION PAGE 12 9/23/05**

1 **PRESIDING COMMISSIONER FARMER:** The time
2 is now 11:58, and we will adjourn the
3 proceedings. Good luck to you, sir.

4 **--oOo--**

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23 **PAROLE DENIED THREE YEARS**

date 2/1/05

24 **THIS DECISION WILL BE FINAL ON: _____**

25 **YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT**
26 **DATE, THE DECISION IS MODIFIED.**

27 **LEANDRE JOHNSON D-88755 DECISION PAGE 13 9/23/05**

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CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, JUDY K. FARNCOMB, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total One in number and cover a total of pages numbered 1 - 79, and which recording was duly recorded at CALIFORNIA STATE PRISON, SOLANO, VACAVILLE, CALIFORNIA, in the matter of the INITIAL PAROLE CONSIDERATION HEARING OF LEANDRE JOHNSON, CDC NO. D-88755, on SEPTEMBER 23, 2005, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated October 17, 2005, at Sacramento,
California.


JUDY K. FARNCOMB
TRANSCRIBER
PETERS SHORTHAND REPORTING